

Supreme Court, U.S.
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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM 1970

No. ~~70-11~~ 70-11

CHEVRON OIL COMPANY,

Petitioner

versus

GAINES TED HUSON,

Respondent

ON WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

Petition for a Writ of Certiorari filed
September 8, 1970
Certiorari Granted May 3, 1971

I N D E X - Page 1

	<u>PAGE</u>
Complaint for Damages for Personal Injuries -----	1
Answer by Chevron Oil Company to the Complaint of Plaintiff -----	4
Interrogatories Propounded by Chevron Oil Company to be Answered by Plaintiff -----	7
Interrogatories Propounded by Chevron Oil Company to Otis Engineering Cor- poration and Highlands Insurance Company -----	17
Third-Party Complaint by Chevron Oil Company Against Otis Engineering Corporation and Highlands Insurance Company -----	20
Answer to Third-Party Complaint -----	26
Answers of Plaintiff to Interro- gatories -----	28
Answers of Otis Engineering Corpora- tion to Interrogatories with Attachments -----	38
Deposition of Mr. Forrest Bradham, November 5, 1968 -----	61
Deposition of Mr. Carmel Fesi, January 20, 1969 -----	84
Amended Answer to Third-Party Complaint -----	111

I N D E X - Page 2

	<u>PAGE</u>
Pre-Trial Conference - Minute Entry, March 24, 1969 -----	113
Motion to Dismiss and Alternatively for Summary Judgment by Chevron Oil Company with Attachments -----	113
Deposition of Mr. George E. Jones, May 12, 1969 with Attachments -----	126
Cross-Claim for Recovery of Compensation Benefits -----	144
Answer by Chevron Oil Company to the Cross-Claim of Highlands Insurance Company -----	145
Pre-Trial Conference - Minute Entry, June 20, 1969 -----	147
Motion and Order to Continue Pre- Trial Conference -----	148
Motion and Order Allowing the Filing of Affidavit in Opposition to Defendant's Motion to Dismiss and/ or for Summary Judgment -----	149
Judgment -----	152
Notice of Appeal by Plaintiff -----	154
Deposition of Gaines Ted Huson, July 30, 1968 -----	154
Opinion, July 14, 1970, United States Court of Appeals, Fifth Circuit -----	194

I N D E X - Page 3

	<u>PAGE</u>
Certificate, September 8, 1970, Supreme Court of the United States --	207
Designation of Record -----	208
Statement of Issues -- 1 -----	211

IN THE DISTRICT COURT OF THE UNITED STATES
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

GAINES TED HUSON : NO. 68-19
Versus : SECTION D
CHEVRON OIL COMPANY : JURY TRIAL REQUESTED

_____ :

COMPLAINT FOR DAMAGES
FOR PERSONAL INJURIES

TO THE HONORABLE THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION, AND THE JUDGES THEREOF:

The complaint of Gaines Ted Huson, 4461 Klingman Drive, Shreveport, Louisiana, of lawful age, through his undersigned counsel, complaining of the above-named defendant, Chevron Oil Company (formerly known as The California Oil Company) respectfully alleges and shows unto this Honorable Court that:

1.

Plaintiff is a resident and citizen of the State of Louisiana;

2.

The defendant, Chevron Oil Company, is a corporation organized and existing pursuant to the laws of a state other than the State of Louisiana, with its principal office outside of the State of Louisiana, but

2

authorized to do and doing business within the State of Louisiana and within the jurisdiction of this Honorable Court;

3.

The matter is controversy herein, exclusive of interest and costs, exceeds the sum of \$10,000.00;

4.

At all times pertinent hereto the plaintiff was employed by Otis Engineering Company as a "wireline operator's helper" at a salary of \$800.00 per month, plus overtime;

5.

On or about December 17, 1965, plaintiff, in the course and scope of his aforesaid employment, was lawfully aboard a fixed, immovable structure known as CC-Structure, located in the Bay Marchand area of the Gulf of Mexico, approximately 20 miles offshore, south of Leeville, Louisiana, which said structure and premises were owned and operated by the defendant, Chevron Oil Company (formerly known as The California Oil Company);

6.

On the aforementioned date, the plaintiff was attempting to dismantle the flow line of one of the wells which had been completed aboard the said structure when he was caused to sustain an injury to his back, trunk and spine, to-wit, the protrusion or rupture of one or more intervertebral discs;

3

7.

The aforesaid injury proximately resulted from the negligence of the defendant, its agents, servants and employees, particularly, but not exclusively, in that the defendant failed and neglected to furnish to the plaintiff a reasonably safe place in which to work, with adequate tools, safeguards, assistants and appliances in order that the plaintiff might perform his duties aboard the said platform without undue risk of harm or physical injury;

8.

As a result of the aforementioned injury the plaintiff has been severely disabled from gainful employment, has been handicapped and hampered in his occupational and everyday pursuits, has suffered pain, mental anguish and loss of life's pleasures and he has incurred or become obligated for medical expenses for his treatment and attempted rehabilitation;

9.

All of the foregoing has been, is and will be to the plaintiff's damage in the sum of \$100,000.00 which he seeks and is entitled to recover of the defendant herein, with interest and all costs of these proceedings;

10.

The plaintiff brings this action against the defendant pursuant to the applicable provisions of the Longshoremen's & Harbor Workers' Compensation Act, the Outer Continental Shelf Lands Act and the General Maritime Law of the United States.

WHEREFORE, plaintiff, Gaines Ted Huson, prays for judgment against the defendant, Chevron Oil Company (formerly known as The California Oil Company), in the full sum of \$100,000.00, with interest thereon from the date of judicial demand, until paid, for all costs and disbursements of this action, for all general and equitable relief and for a trial by jury.

KIERR and GAINSBURGH

By s/Samuel C. Gainsburgh
 Samuel C. Gainsburgh
 1718 National Bank of Com. Bldg.
 New Orleans, Louisiana 70112
 ATTORNEYS FOR PLAINTIFF

...000...

ANSWER BY CHEVRON OIL COMPANY
 TO THE COMPLAINT OF PLAINTIFF

(Number and Title Omitted)

Comes now Chevron Oil Company, who for answer to the complaint of plaintiff, avers:

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

This Court is without jurisdiction for the reasons that on the date, place and time alleged, plaintiff was performing services as a laborer, he was not a crew member or a seaman entitled to recover benefits under the provisions of the Jones Act; and, the amount in

controversy does not exceed the sum of \$10,000.00, exclusive of interest and costs.

Third Defense

And now answering the complaint of plaintiff, defendant avers as follows:

I.

For lack of sufficient information to justify a belief, defendant denies as written the allegations of Article 1.

II.

Defendant admits the corporate capacity alleged in Article 2.

III.

Defendant denies the allegations in Article 3.

IV.

Defendant Chevron Oil Company denies as written the allegations of Article 4, except to admit that at all times pertinent plaintiff was employed by, and under the complete control, direction and supervision of Otis Engineering Corporation, an independent contractor, pursuant to the provisions of a written agreement with defendant.

V.

Except as above admitted and set forth, defendant denies as written the allegations of Article 5, and further admits that all times pertinent, it owned and operated the fixed and immovable CC Structure in Bay

Marchand, Gulf of Mexico, off the coast of Louisiana.

VI.

For lack of sufficient information to justify a belief, defendant denies, as written the allegations of Article 6.

VII.

Defendant denies the allegations of Article 7.

VIII.

Defendant denies the allegations of Article 8.

IX.

Defendant denies the allegations of Article 9.

X.

Defendant denies the allegations of Article 10.

Fourth Defense

Plaintiff's accident and injuries complained of in this action, if any, were caused proximately and solely as a result of his own negligence, inattention to what he was doing and willful misconduct, as well as that of Otis Engineering Corporation, its agents, servants and employees, for which defendant can have no responsibility.

Fifth Defense

Alternatively, and only in the event this Court should determine it has jurisdiction in the premises, and that defendant was guilty of negligence proximately causing the accident, the existence of which negligence is denied, then defendant avers that plaintiff assumed the risks thereof and was guilty of contributory negligence, which negligence was the proximate cause of his injuries, barring and mitigating his right of recovery in this action.

WHEREFORE, Chevron Oil Company demands that plaintiff's action be dismissed at his costs; and, for such other and further relief as this Court shall deem equitable and just.

s/Lloyd C. Melancon
MESSRS. McLOUGHLIN, BARRANGER,
WEST, PROVOSTY AND MELANCON
Counsel for Chevron Oil Company
720 Hibernia Bank Building
New Orleans 70112
523-5116 Our LM0143

...ooo...

INTERROGATORIES PROPOUNDED BY CHEVRON OIL
COMPANY TO BE ANSWERED BY PLAINTIFF

(Number and Title Omitted)

TO: Mr. Gaines Ted Huson, through his counsel,
Samuel C. Gainsburgh, Esq., of Messrs.
Kierr and Gainsburgh, 1718 National Bank
of Commerce Building, New Orleans 70112.

SIR:

Defendant Chevron Oil Company, pursuant

to the applicable provisions of the Rules of Civil Procedure, propounds to you interrogatories numbered 1 through 39, to be timely answered under oath, which interrogatories are intended to be, and should be considered continuing, as follows:

- 1- Please state your:
 - a. full name
 - b. residence address
 - c. business address
 - d. exact date of birth
 - e. place of birth
 - f. Social Security number
 - g. U. S. Income Tax number
- 2- Please state your previous addresses for the past ten (10) years, and the length of time at which you have resided at each address.
- 3- If you are, or have married, please state:
 - a. the date and place of each marriage
 - b. the full name of your present spouse and any former spouse or spouses
 - c. the date and manner of dissolution of any prior marriage.
- 4- Please state the extent of your schooling, the place or places where it was obtained, and the year in which you obtained your last formal education.
- 5- Please state whether or not you have ever been convicted of a felony. If so, please state where, when and what felony.

- 6- Please state whether or not you have served in the Armed Forces of the United States, and if so give the dates of your service and the character of your discharge.
- 7- Describe in detail the injury sustained by you in the accident set forth in the complaint, libel and/or petition, setting forth in detail:
 - a. whether you sustained any fractures or dislocations of any bones.
 - b. any abrasions, contusions or hematomas of the skin.
 - c. any sprains or strains of any ligaments or muscles.
 - d. any injury to any nerve or the nervous system.
 - e. any aggravation of any pre-existing condition.
 - f. any internal injuries and the nature of same.
 - g. any other injuries.
- 8- Please state whether or not you received medical treatment for the alleged injuries and, if so, also state the following:
 - a. the name and addresses of the hospital or other place of treatment and the dates you were confined therein.
 - b. the name and addresses of each doctor who has attended you or examined you.
 - c. the number of occasions on which you were examined or treated by such doctors, setting forth the dates of each examination or treatment.
 - d. the treatment rendered by the

various doctors indicating whether said treatment was rendered at the doctor's office, at your home, or in the hospital.

- 9- If you are, or were, required to wear a cast, brace, crutch or artificial support, please give the name of such brace or support and describe it and state the length of time you were required to wear it. Also please state the name of the doctor prescribing the use of such support.
- 10- If X-rays were taken of you with reference to the injuries alleged to have been received by you as a result of the accident described in the complaint, libel and/or petition, please state when, where, by whom and the names and addresses of the persons having control of or custody of the X-rays, and give a synopsis of all such X-ray reports.
- 11- Please state whether or not you are claiming any of your injuries are of a permanent nature and, if so, which of said injuries.
- 12- Please state the date of your last treatment by the various doctors, and indicate which of said doctors are still treating you, if any.
- 13- Please state whether or not you have been involved in any accidents prior to the accident described in your complaint, libel and/or petition, and if so, please state:

- a. the place of each of said accidents.
- b. the date of each of said accidents.
- c. any personal injuries that you may have received in any such accidents.
- d. the name of each and every medical practitioner treating you or examining you for each of the said injuries.

14- Please give the same information requested in the preceding interrogatory for the period since this accident.

15- Please state whether or not you have ever been hospitalized prior to or subsequent to the accident described in the complaint, libel and/or petition, other than referred to in previous answers, and if so state:

- a. the name and address of all such hospitals, clinics, or other medical institutions.
- b. the dates during which you were so confined.
- c. the nature of your illness, disease, or injury.
- d. the names and addresses of your treating and examining physicians.

16- Please state in general the condition of your health prior to the accident described in the complaint, libel and/or petition, and state whether or not you had any pre-existing disease, condition, or prior injury, and if so, whether

or not it was aggravated by the accident described in the complaint, libel and/or petition.

- 17- Please state whether or not you have ever been denied any life, health or automobile insurance coverage, or have had to pay increased insurance premiums therefor because of any physical infirmity, ailment, disease, or other cause.
- 18- Please state the last time prior to the accident you had a complete physical examination, and the name and address of the doctor making the examination.
- 19- Please state the names and addresses of any doctors that treated you for a period of three (3) years prior to the accident set forth in the complaint, libel and/or petition, and describe the type of treatment rendered by him.
- 20- Please state whether or not you are now, or at the time of the accident were, receiving compensation benefits from any person, firm, association, corporation, or Government, on account of any medical or physical disability, and if so, state the name of the agency, person, corporation, association, or Government that is or was providing the compensation and the reason for the compensation.
- 21- Please give the name and address of your family physician.

- 22- Please state whether or not you have ever made a claim for personal injuries, and whether or not you have ever been involved in any lawsuit or workmen's compensation claim which involved a claim for personal injuries either prior to or subsequent to this accident and, if so, please state:
- a. the nature of such law suit or claim.
 - b. the name and last known address of the parties to said law suit or claim.
 - c. the court and address where such law suit or claim was filed, if any.
 - d. the date of such law suit or claim, and
 - e. the disposition of said claim or law suit.
- 23- Please state the nature of your employment at present and for the five (5) years preceding the answering of these interrogatories and the place where you were employed, the names of your employer, and the rate of compensation for each employment.
- 24- Please state the amount of gross income received by you from your employment, business or profession for each of the three (3) years immediately preceding the year in which the accident occurred, the year in which the accident occurred, and the following year.
- 25- Please state if you have returned to your employment since the

accident and, if so, give the date that you returned to your employment.

- 26- If you have not returned to your employment since this accident, please state when it is expected by you that you will return to your employment.
- 27- If you claim you have a permanent injury that affects your earning capacity, please state:
 - a. whether a doctor has given you a disability rating and if so, the percentage and the name and address of the doctor, and
 - b. how the injury prevents or makes difficult the performance of your work.
- 28- Please state the date or dates you were prevented from performing the duties of your trade, employment or business by reason of your alleged injuries, and the amount of earnings or income that is claimed by you to have been lost as a result of the accident described in your complaint, libel and/or petition.
- 29- Please state whether you are claiming as an element of damages future loss of earnings or impairment of earning capacity. If you are claiming such damages, state the amount and the basis upon which you compute such amount.
- 30- Please itemize by name and address all medical bills paid or incurred

by you in connection with the accident described in the complaint, libel, and/or petition, including but not limited to the cost of ambulance, doctor's bills, X-rays, hospital expense, nurses expenses, medicines, surgical apparatus or other costs.

- 31- Please itemize any other expenses or financial losses which you have paid or incurred or which you attribute to the accident described in the complaint, libel and/or petition.
- 32- Please state whether or not you are claiming as an element of damages future medical expenses. If you are claiming such damages, state the amount claimed and the basis upon which you compute that amount.
- 33- Please state whether or not you are claiming as an element of damages pain and suffering. If you are claiming such damages past or future, please state the amount and the basis upon which you compute such amount.
- 34- Please state whether you are claiming any element of damages not heretofore listed, and if so, state the element of damages for which you are seeking recovery, the amount thereof and the basis for computing same.
- 35- Please state the names, addresses and relationship to you of any

persons claimed by you to be dependent upon you in whole or in part at the time of the accident described in the complaint, libel and/or petition filed herein.

- 36- Please give a concise description of the way in which the accident described in your complaint, libel and/or petition occurred.
- 37- Please state the names and addresses of each person known or reasonably felt by you, your attorney, or other representative, to be:
 - a. an eye witness to the accident described in the complaint, libel and/or petition filed herein.
 - b. not an eye witness but having knowledge of some of the facts or circumstances upon which the allegations of negligence or damage contained in the complaint, libel and/or petition are based.
 - c. possession of or having control of any model, map, drawing or photograph relative to the facts of this case, and if so, briefly describe such model, map, drawings or photograph.
 - d. used by you as a witness at the trial of this cause, non-expert or expert.
- 38- Have you conferred with and/or rendered an oral or written statement to anyone about the circumstances and facts of your alleged accident?

39- If you answer to number 38 above is in the affirmative, please state the date, the place and by whom taken, and whether you will furnish a copy thereof to undersigned counsel.

New Orleans, Louisiana, March , 1968.

MESSRS. McLOUGHLIN, BARRANGER,
WEST, PROVOSTY AND MELANCON
Counsel for Chevron Oil Company
720 Hibernia Bank Building
New Orleans 70112
523-5116 Our LM0143

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INTERROGATORIES PROPOUNDED BY CHEVRON OIL
COMPANY TO OTIS ENGINEERING CORPORATION
AND HIGHLANDS INSURANCE COMPANY

(Number and Title Omitted)

TO: Otis Engineering Corporation and
Highlands Insurance Company

SIRS:

Defendant and third-party plaintiff Chevron Oil Company, pursuant to the applicable provisions of the Rules of Civil Procedure, propounds to you interrogatories to be timely answered under oath, which interrogatories are intended to be, and should be considered continuing, as follows:

- 1) Please state the name of each and every person who has or claims to have knowledge relevant or material

to the allegations and issues in this lawsuit, and with respect to such person state:

a. Is he an expert witness, physician and/or investigator; if so, state:

- (1) his field;
- (2) his office, and employed by what party in this litigation;
- (3) has he rendered a report or made photographs;
- (4) has this defendant been furnished a copy of that report or those photographs;
- (5) the date, the place, the time, the person to whom made and the substance of each and every report or photograph; and,
- (6) who has possession and where are they located;

b. Is he a lay witness; and if so, state:

- (1) address;
- (2) address at the time of the casualty complained of herein;
- (3) was this person an eye-witness to the casualty complained of herein;
- (4) has this person rendered an oral, recorded, written or any other type of statement or made photographs; and if so, state whether the statement or photographs

are in your possession or control;

- (5) if such person has given oral, recorded, written or any other type of statement or made photographs, please state:

- i. the time, the place and the person to whom made;
- ii. the substance of the statements or photographs;
- iii. the employer of the persons taking the statements or photographs;
- iv. whether the statements were recorded or taken down verbatim by a stenographer or court reporter or other individual, and in what manner; and,
- v. whether or not an oath was administered to the person giving the statement.

- (6) if you have possession or control of such statements or photographs, which were not already furnished this defendant, will you please furnish copies and/or the recordings thereof to undersigned counsel; and,

- (7) if you have possession of the transcript of such statements will you please

furnish a copy to undersigned counsel.

New Orleans, Louisiana, March , 1968.

s/Lloyd C. Melancon
MESSRS. McLOUGHLIN, BARRANGER
WEST, PROVOSTY AND MELANCON
Counsel for Chevron Oil Company
720 Hibernia Bank Building
New Orleans 70112
523-5116 Our LM0143

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THIRD-PARTY COMPLAINT BY CHEVRON OIL
COMPANY AGAINST OTIS ENGINEERING
CORPORATION AND HIGHLANDS INSURANCE COMPANY

(Number and Title Omitted)

Alternatively, comes now Chevron Oil Company (hereinafter called Chevron), without abandoning or waiving the defenses heretofore asserted in the above-entitled and numbered Civil Action, but expressly preserving and reserving the benefit thereof, for a third-party complaint against Otis Engineering Corporation and Highlands Insurance Company (hereinafter called Otis and Highlands), in a cause of action for contribution and indemnity, civil and maritime, alleges on information and belief as follows:

For A First Count Or Cause

1.

Chevron is a corporation duly organized and existing under and by virtue of the laws of the State of California, doing business

in this District.

2.

Third-party defendants are foreign corporations authorized to do and doing business in this District with designated agents, or otherwise, for service of process.

3.

Plaintiff Gaines Ted Huson filed a complaint against Chevron, claiming damages in the sum of \$100,000.00 for personal injuries alleged to have been sustained by him on or about December 17, 1965, allegedly as a result of negligence.

4.

Prior to and at the time of the alleged accident herein sued on, Highlands was the insurer of Otis for the allegations of this third-party complaint.

5.

Prior to December 17, 1965, Chevron and Otis entered into agreements, contracts and understandings wherein Otis obliged itself as an independent contractor for the furnishing of personnel, services and supplies to Chevron, copies of which are in the possession of third-party defendant, and copies will be presented and relied upon at the trial.

6.

Under the terms of the foresaid agreements and contracts, Otis agreed and contracted as an expert, professional,

independent contractor to furnish personnel, services and supplies to Chevron in a careful, diligent, proper, skillful and workmanlike manner, and in accordance with accepted maritime and oil field practices, and to conduct its business so as not to visit liability on the part of its customer Chevron.

7.

On or about December 17, 1965, and at all times pertinent, Otis was engaged in operations pursuant to its foresaid respective agreements and contractual obligations, and that at all times during the foresaid operations, all pertinent appliances, area, equipment, materials, personnel, services and supplies were under the control, direction and supervision of Otis, for its use and benefit in performing the foresaid contractual obligations.

8.

Because of the contractual obligations to furnish equipment, materials, personnel, services and supplies at the time and place pertinent, Otis and its agents, employees, representatives and contractors were obligated to exercise due and proper care and to use all necessary efforts to prevent accidents or injuries to all personnel in and about the same working spaces in its control and custody, and it was its further duty to correct and prevent any and all dangerous conditions in the necessary work spaces pertinent therein and to advise and warn all persons and prevent them from exposing themselves to any danger which might arise, and to take steps properly to correct and eliminate any such dangerous conditions, and to

stop all work until any such conditions were corrected.

9.

If the appliances, area, equipment, gear, materials, personnel, services and supplies by which plaintiff avers he was injured were in any defective, unsafe or unworkmanlike condition, which is denied, they were so by the actions or omissions of Otis, through the fault and negligence of itself, its agents, employees, representatives and contractors in the performance of its work as contracted for with Chevron.

10.

The events and injuries, if any, as alleged in the complaint by plaintiff were not due to any fault or negligence on the part of Chevron but were due to the breach of contract and warranty of workmanlike services by Otis, through the fault and negligence of itself, its agents, employees, representatives or contractors in the performance of the work as contracted for with Chevron.

11.

If the alleged injuries to plaintiff were not caused by his own fault and negligence, said injuries were caused by the faulty performance, negligence and breach of contractual obligations of Otis, its agents, employees, representatives and contractors in that it failed to exercise workmanlike supervision as was needed for the proper performance of the work in order to prevent accidents; failed to utilize recognized and safe methods of performing work; failed to provide competent employees for the performance

of such work; failed to provide an adequate number of employees to perform such work; failed to instruct employees as to the use of the appliances, area, equipment, gear, materials, personnel, services and supplies which it undertook to use; and, failed to perform the duties under the foresaid contracts with reasonable care and professional skill; and, alternatively, because of Otis' active, moving and primary negligence proximately causing plaintiff's alleged injuries; and, in such other respects as may be proved at the trial.

12.

By reason of the foregoing, Otis is liable, in solido, together with its insurer Highlands, to reimburse Chevron for all attorney's fees, costs, disbursements and expenses incurred by defendant; and, if Chevron is held liable, for the full amount of such judgment; and, in the further alternative, that Otis is a co or joint tort feisor and as such, must be cast in judgment together with its insurer Highlands, for their pro-rata share of any judgment obtained by plaintiff against Chevron.

For A Second Count Or Cause

13.

Chevron refers to Paragraphs 1 through 11 of the first count or cause of this third-party petition and incorporates the same herein with the same effect and force as if recited at length.

14.

Chevron avers that written requests

have been made upon all third-party defendants inviting them to take over the defense of this Civil Action for Chevron, that third-party defendants have refused and will not take over the defense of Chevron even though the fore-said agreements, contracts and pertinent insurance policies indicate that Chevron is to be held harmless, indemnified and protected from any loss, expense, claim, or otherwise, and is an additional or designated insured under the pertinent insurance policies; and, because of their refusal to unqualifiedly defend, hold harmless, indemnify and protect Chevron under the provisions of the foresaid agreements, contracts and pertinent insurance policies, as required by the conditions and terms thereof, third-party defendants are liable, in solido, to reimburse Chevron for all attorney's fees, costs, disbursements and expenses incurred; and, if Chevron is held liable, for the full amount of the judgment.

WHEREFORE, third-party plaintiff Chevron Oil Company prays that process in the manner prescribed by law issue against Otis Engineering Corporation and Highlands Insurance Company, summoning them to appear and answer under oath all and singular the matters set forth herein, and after due proceedings had, there be judgment in favor of Chevron Oil Company against third-party defendants, in solido, for all attorney's fees, costs, disbursements and expenses incurred by third-party plaintiff; and, in the event Chevron Oil Company is cast in the complaint of plaintiff Gaines Ted Huson, third-party plaintiff prays for a similar judgment in its favor against third-party defendants; and, in the further alternative, that Otis Engineering Corporation be declared co or joint tortfeasor, and as such be cast in judgment, in

solido, with its insurer Highlands Insurance Company, for any judgment obtained by plaintiff against Chevron Oil Company; and, for such other and further relief as the Court shall deem equitable and just.

s/Lloyd C. Melancon
MESSRS. McLOUGHLIN, BARRANGER,
WEST, PROVOSTY AND MELANCON
Counsel for Chevron Oil Company
720 Hibernia Bank Building
New Orleans 70112
523-5116 Our LM0143

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ANSWER TO THIRD-PARTY COMPLAINT

(Number and Title Omitted)

Now into court through undersigned counsel come Otis Engineering Corporation and Highlands Insurance Company and for answer to the third-party complaint of Chevron Oil Company aver as follows:

FIRST DEFENSE

The third-party complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

1.

Defendants admit the allegations of paragraphs 1, 2, 3, and 4 of the third-party complaint.

2.

Defendants deny the allegations of

Paragraphs 9, 10, 11, and 12 of the third-party complaint.

3.

Defendants deny the allegations of Paragraphs 5, 6, and 8 of the third-party complaint, except to admit the existence of a contract between Chevron Oil Company and Otis Engineering Corporation and to aver that the said contract is the best proof of its terms and conditions.

4.

Defendants deny the allegations of Paragraph 7 of the third-party complaint, except to admit that on December 17, 1965 employees of Otis were performing certain work under the terms and conditions of the contract between Chevron and Otis.

5.

No answer is required to the allegations of Paragraph 13 of the third-party complaint.

WHEREFORE, third-party defendants pray that this their answer be deemed good and sufficient and that, after due proceedings had, the third-party complaint herein be dismissed with prejudice and at the cost of third-party plaintiff.

PHELPS, DUNBAR, MARKS, CLAVERIE & SIMS

By s/Blake West
BLAKE WEST, Trial Attorney
1300 Hibernia Bank Building
New Orleans, Louisiana
Telephone: 529-1311

...000...

ANSWERS OF PLAINTIFF TO INTERROGATORIES

(Number and Title Omitted)

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, a Notary Public, duly commissioned and qualified in and for the aforesaid Parish and State, therein residing, personally came and appeared:

GAINES TED HUSON

who, being first duly sworn, for answer to the interrogatories propounded to him by the defendant in the above-numbered and entitled cause, deposed and said that:

1. (a) Gaines Ted Huson
(b) 161 Cenac Street, Houma, Louisiana.
(c) 2859 Hollywood Avenue, Shreveport, Louisiana.
(d) June 1, 1939
(e) Shreveport, Louisiana
(f) 438-52-1344
2. (a) 4461 Clingman Drive, Shreveport, Louisiana. July 1967 to March 1968 (8 months).
(b) 1617 E. Cotton Street, Longview, Texas. April 1967 to July 1967 (3-1/2 months).
(c) 838 Gum Street, Houma, Louisiana. June 1966 to April 1967 (10 months).
(d) 726 East Park Street, Houma, Louisiana. January 1966 to June 1966 (6 months).

- (e) 1500 block Division Street, Houma, Louisiana. May 1965 to January 1966 (8 months).
 - (f) 505-1/2 Suthon Avenue, Houma, Louisiana. September 1964 to May 1965 (8 months).
 - (g) 2859 Hollywood Avenue, Shreveport, Louisiana. 1957 to 1964 (8 years).
3. (a) July 4, 1961 - Vivian, Louisiana (first marriage); September 19, 1964 - Houma, La. (present marriage).
 - (b) Betty Sue Banguss (former wife); Jane Catherine Babin Huson (present wife).
 - (c) Divorced from Sue Banguss approximately August, 1962, Shreveport, Louisiana.
4. Werner Park Elementary - Shreveport, Louisiana. Lakeshore Junior High - Shreveport, Louisiana. Fair Park High - Shreveport, Louisiana; Graduated 1957. Louisiana Polytechnic Institute - Ruston, Louisiana, 1957 - One Semester. Centenary College - Shreveport, Louisiana, 1958 - Night School.
 5. Yes - Simple burglary - Shreveport, Louisiana. 1963 - 2 years active probation.
 6. Served in the United States Air Force Reserve. Entered Active Duty December, 1962. Received Honorable Discharge May, 1967.

7. (a) Sustained ruptured disc in lower back pinching nerves and causing extreme discomfort.
- (b) None.
- (c) Strained muscles in lower back area.
- (d) Herniated disc caused pinched nerves in back, resulting in frequent episodes of extreme pain and discomfort in region of lower back, also spells of pain and numbness in left leg.
- (e) None, except as mentioned above.
- (f) None, except as mentioned above.
- (g) No.
8. I received medical treatment from various doctors, see below.
- (a) Physicians & Surgeons Hospital, Shreveport, La. May 15, 1967. Stayed in hospital 5 days.
- (b) Dr. Thomas Haydel, Houma, Louisiana.
Dr. H. L. Givens, Houma, Louisiana.
Dr. George Battalora, Jr., New Orleans, Louisiana.
Mr. Kenneth Barrilleaux, Physiotherapist, Houma, La.
Dr. H. L. Cohenour, 803 Jordan Street, Sheveport, La.
Dr. Ray King, 803 Jordan Street, Shreveport, La.
- (c) I can only estimate the number of treatments by each doctor as I do not have a record of each visit. The various doctors' offices most

certainly have records available with accurate dates.

- (d) i. Dr. Thomas Haydel - X-rayed back, prescribed pain reliever and muscle relaxant drugs, treated in his office.
- ii. Dr. H. L. Givens - prescribed pain relievers and muscle relaxants; prescribed physiotherapy and later referred me to orthopedist. Treated in Dr. Givens' office.
- iii. Dr. George Battalora, Jr. - made additional x-rays and continued muscle relaxants. Treated at his office.
- iv. Dr. H. L. Cohenour - referred me to orthopedist, Dr. Ray King.
- v. Dr. Ray King - x-rays, pain reliever drugs, muscle relaxants, performed myelogram surgery at the Physicians & Surgeons Hospital, Shreveport, Louisiana. Prescribed orthopedic back brace, suggested surgery might be required at a later date if back did not improve.

9. Dr. Ray King prescribed orthopedic back brace after positive myelogram findings. I wore it continuously for approximately nine weeks and still wear it occasionally when excessive back pain requires it.

10. X-rays were made by Dr. Thomas Haydel, Dr. George Battalora, Jr. and

Dr. Ray King. To the best of my knowledge they are in the possession of the various offices of aforementioned doctors.

11. The ruptured disc in my back is a permanent injury. The chances are that it will progressively get worse and possibly require surgery in the future.
12. Dr. Ray King saw me last approximately six months ago. (Sept. 1967)
13. I was involved in an automobile accident in 1953 at age 14. Accident occurred in Shreveport, Louisiana, resulting in a fractured left knee. I was treated by Dr. H. L. Cohenour and Dr. Donald Overdyke, both of Shreveport, Louisiana.
14. No other accidents.
15. I was hospitalized as result of accident in 1953 at the Tri-State Hospital in Shreveport, Louisiana. See #13 for doctors.
16. My health was excellent prior to the accident. I had no pre-existing condition prior to back injury in 1965, excepting knee injury referred to in Question #13.
17. I have never been denied any health, life or automobile insurance coverage and have paid no increased premiums.
18. My most recent physical examination prior to the accident was in August

of 1964 by Otis Engineering Corporation's doctor who was Dr. Buford Autin, Sr. of Houma, Louisiana.

19. Dr. H. L. Givens of Houma, Louisiana, treated me for flu and sore throat.
20. I was not receiving any type of compensation before the accident and am not receiving any at this time, although I have claims pending against Otis for benefits.
21. Dr. H. L. Cohenour, 803 Jordan Street, Shreveport, La. (recently retired).
Dr. H. L. Givens, Houma, Louisiana.
22. (a) My mother filed suit on my behalf as a result of aforementioned automobile accident in 1953.
(b) Travelers Insurance Company.
(c) District Court, Shreveport, Louisiana.
(d) 1953.
(e) Settled out of Court.
23. I am presently employed by Lane Wells Company in Houma, Louisiana, as night dispatcher and "loader," (loader refers to loading the explosive charges in their perforators, not loading trucks, etc.). I was turned down for position as wireline hand paying \$700.00 to \$800.00 per month because of history of back injury. My present job pays \$92.00 per week, approximately half of what

I could make doing service work that I am trained for but that back injury prevents me from doing. I was employed by Lane Wells Company in March, 1968.

I was self-employed (wholesale tomato business) September 1967 through January 1968. My average earnings were \$350.00 per month.

Previously employed with Otis Engineering Corporation from August 1964 through July 1967. Employed at Houma, Louisiana, August 1964 to April 1967; I worked in Longview, Texas, from April 1967 through July 1967. My average earnings were \$650.00 per month.

24. 1962 - \$4,000.00 approximately
 1963 - \$4,600.00 "
 1964 - \$5,000.00 "
 1965 - \$7,000.00 "
 1966 - \$7,200.00 "
 1967 - \$2,800.00 "

25. I returned to work under light duty release from doctor in the capacity of "dispatcher" the first time in either February or March, 1966. I tried to go back to field duty as wireline hand April 1967 in Longview, Texas.

26. Although as previously stated I attempted to return to regular wireline work in April 1967, my back began to give me trouble and I was able to continue this work for less than two months when it again became necessary for me to seek medical help.

It is highly probable that I will never be able to return to oilfield service work of this type because of back injury.

27. (a) The herniated disc in my back is certainly a permanent injury. Dr. Ray King of Sheveport, La., at one time gave me a disability rating of 5%, but he has treated me since then.

(b) Because of the nature of the oilfield service work I was doing, extremely heavy pieces of equipment are handled daily in the routine performance of your job. My back will not now hold up to this type of work as demonstrated by trouble I had after trying to return to regular wireline work in Longview, Texas. Standing on my feet for long periods causes excessive back pain. I am unable to drive a car for long distances (i.e. several hours), without trouble. I am unable to lift heavy objects without excessive back pain.

28. Starting December 1965 I lost approximately 5 months work. I was paid \$75.00 per week compensation while off. My salary, if I had been able to work, was at that time averaging \$750.00 per month. Therefore I lost \$2,175.00 (\$3,750 less \$1,575.00 compensation - \$2,175.00) for that 5-month period. I then obtained light duty release from doctor and was given dispatcher job which paid \$500.00 per month; (averaged \$560.00 per month at overtime) I held this job until March 1967, a

total of approximately 10 months. My salary loss while in this "light duty" position was an average of \$190.00 per month or \$1,900.00 for the 10-month period. Starting in May 1967 I drew workmen's compensation of \$35.00 per week, for approximately 2-1/2 months, losing in excess of \$400.00 per month salary or a total of \$1,000.00 for this period. My present employment pays \$360.00 per month and I have been unable to return to wireline service work (because of back injury) that would pay over \$700.00 per month. Therefore I am losing approximately \$350.00 per month at present as direct result of back injury.

29.

I feel that I definitely have a claim for future loss of earnings and/or impairment of earning capacity. At present my loss of earnings as a result of injury amounts to over \$3,000.00 per year. Figuring difference between my present age 28 and retirement age 65 gives 37 productive years as base to figure loss of earnings.

$37 \text{ years} \times \$3,000.00 = \$111,000.00.$
I therefore feel that \$100,000.00 is a realistic figure for loss of earnings claim.

30.

Medical expenses incurred as a result of accident were paid by insurance company with exception of \$116.00 in drug bills. I do not have access to medical bills paid by the insurance company of Otis Engineering Corporation.

31. I have lost my car because I was unable to meet the payments when off drawing compensation of \$35.00 per week. I feel that this cost me \$1,500.00 as I had already paid over \$2,600.00 on the car.
32. I claim \$10,000.00 future medical expenses to cover future treatments and probable future surgery.
33. My claim for past and future pain and suffering is \$150,000.00 and I feel that no amount of money can compensate for the pain already suffered.
34. Loss of life's pleasures, \$50,000.00.
35. Jane Catherine Huson, wife, 161 Cenac Street, Houma, Louisiana.
Connie Lynn Huson, daughter, 161 Cenac Street, Houma, Louisiana.
Gaines Ted Huson, II, son, 161 Cenac Street, Houma, Louisiana.
36. I was attempting to dismantle a flow line but because of the lack of reasonable access to the line, I was required to lay on my back, up underneath a grating, in an awkward position and, at the same time, attempt to pull on a pipe wrench by myself because there was insufficient room for me to work and, therefore, no room for me to obtain anyone's assistance, even if it had been available.
37. (a) Mr. Carmel Fesi, 137 Hackberry Street, Houma, Louisiana.

38. Yes.

39. On or about October 1967 to Mr.
Samuel C. Gainsburgh, Attorney, New
Orleans, Louisiana.

No.

s/Gaines Ted Huson
GAINES TED HUSON

Sworn to and subscribed before me, Notary,
this 25th day of June, 1968.

s/Samuel C. Gainsburgh
NOTARY PUBLIC

...oOo...

ANSWERS OF OTIS ENGINEERING
CORPORATION TO INTERROGATORIES

(Number and Title Omitted)

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority,
duly commissioned and qualified in and for
the aforesaid Parish and State, came and ap-
peared Blake West, who, being first duly sworn,
for answer to the interrogatories propounded
to Third-party defendant, Otis Engineering
Corp. by Third-party plaintiff, Chevron Oil
Company, in the above entitled cause, de-
posed and said that the following answers are
true and correct to the best of his knowledge,
information, and belief:

It is noted that the original complaint
herein claims damages for an injury allegedly
suffered in December, 1965 and that these

answers to interrogatories have reference to such accident. However, Third-party defendant, Otis Engineering Corp., takes the position that if plaintiff is disabled, which is denied, such disability is not the result of the alleged injury in December, 1965, from which injury, if any, plaintiff fully recovered, and after which plaintiff was able to return to his former duties. With this reservation, Third-party defendant lists the witnesses and statements known to it in response to interrogatories propounded by Third-party plaintiff:

1.

Gaines Ted Huson, plaintiff, 4461 Klingman Drive, Shreveport, Louisiana, whose address in December, 1965 was 1317 Davidson Avenue, Houma, Louisiana. We have two written statements from Mr. Huson, dated March 7, 1966 and June 2, 1967, as well as a copy of Mr. Huson's claim before the Deputy Commissioner, Department of Labor, dated April 16, 1968, copies of all of which are attached hereto.

2.

Carmel Fesi, service specialist, employed by Otis Engineering Corp., P. O. Box 390, Houma, Louisiana, 70380. Mr. Fesi was plaintiff's co-worker in December, 1965. We have no statement from him.

3.

Jim Tubbs, wire-line operator, employed by Otis Engineering Corp., P. O. Box 390, Houma, Louisiana, 70380. Mr. Tubbs was plaintiff's co-worker in December, 1965. We have no statement from him.

4.

William R. Miller, District office manager, employed by Otis Engineering Corp., P. O. Box 390, Houma, Louisiana, 70380, who made written reports dated December 13, 1965, December 16, 1965, December 21, 1965 (2), and January 4, 1966 (2), copies of which reports are attached hereto.

5.

W. R. Huber, District office manager, employed by Otis Engineering Corp., P. O. Box 390, Houma, Louisiana, 70380, who made written reports dated March 6, 1966 (2) and May 23, 1966 (2), copies of which reports are attached hereto.

6.

Cecil A. Richardson, District office manager, employed by Otis Engineering Corp., P. O. Box 390, Houma, Louisiana, 70380, who made written report dated March 10, 1967, copy of which is annexed hereto.

7.

Dr. Haydel, 502 Barrow Street, Houma, Louisiana, who examined plaintiff and issued report dated December 21, 1965, a copy of which is annexed hereto.

8.

Dr. Thomas H. Givens, 730 Bellanger Street, Houma, Louisiana, who examined plaintiff and issued reports dated April 14, 1966 and February 17, 1967, copies of which are annexed hereto.

41

9.

Dr. G. C. Battalora, Jr., New Orleans, Louisiana, who examined and treated plaintiff, and who issued reports dated April 5, 1966, July 8, 1966, and November 14, 1966, copies of which reports are annexed hereto.

PHELPS, DUNBAR, MARKS, CLAVERIE & SIMS

By s/Blake West
BLAKE WEST, Trial Attorney
1300 Hibernia Bank Building
New Orleans, Louisiana
Telephone: 529-1311

Sworn to and subscribed before me, this
22nd day of July, 1968.

Notary Public

FORM APPROVED: BUREAU OF EMPLOYMENT NUMBER 24-11272

U.S. DEPARTMENT OF LABOR		BUREAU OF EMPLOYEES' COMPENSATION		924-21
EMPLOYEE'S CLAIM FOR COMPENSATION				1. SEC CASE NUMBER
SEE INSTRUCTIONS ON REVERSE				2. CARRIER'S NUMBER
3. NAME OF INJURED EMPLOYEE (TYPE OR PRINT)	FIRST NAME	MIDDLE INITIAL	LAST NAME	4. DATE OF INJURY
	Gaines	Tod	HUSON	December 17, 1965
5. EMPLOYEE'S ADDRESS (Number, street, city, State, zip code)				6. <input type="checkbox"/> SINGLE <input type="checkbox"/> MARRIED
2859 Hollywood Avenue, Shreveport, Louisiana				
7. SEX <input checked="" type="checkbox"/> MALE <input type="checkbox"/> FEMALE	8. AGE OR DATE OF BIRTH June 1, 1939	9. SOCIAL SECURITY NUMBER 438 52 1344	10. DID INJURY CAUSE LOSS OF TIME BEYOND DAY ON SHIFT OR ACCIDENT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
11. ON DATE OF INJURY GIVE	12. HOUR BEGAN WORK	13. HOUR OF ACCIDENT	14. DID YOU STOP WORK IMMEDIATELY? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	15. DATE AND HOUR PAY STOPPED About Jan. 12, 1966
16. DATE AND HOUR YOU RETURNED TO WORK About May 21, 1966	17. OCCUPATION (Job title, longshoreman, welder, etc.) Wireline operator helper	18. NUMBER OF YEARS IN THIS OCCUPATION About 3 years	19. INJURED WHILE DOING SUCH WORK? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If "No," explain in item 24)	
20. WAGES OR EARNINGS (Include overtime allowances, etc.) \$175.00	21. TOTAL EARNINGS FOR PREVIOUS YEAR About \$7,000.00	22. NAME OF FOREMAN OR SUPERVISOR AT TIME OF ACCIDENT Carmel Pasi, Operator		
23. HOW MANY YEARS HAVE YOU WORKED FOR THIS EMPLOYER? 3	24. NUMBER OF DAYS USUALLY WORKED PER WEEK 7	25. EARLIEST DATE FOREMAN OR EMPLOYER KNEW OF ACCIDENT December 17, 1965		
26. EXACT PLACE WHERE ACCIDENT OCCURRED (Street address, city, town. Name of vessel, pier, terminal, etc.) CO-Structure, Bay Marchand Area, CCS.				
27. DESCRIBE IN FULL HOW THE ACCIDENT OCCURRED (Relate the events which resulted in the injury or occupational disease. Tell what the injured was doing at the time of the accident. Tell what happened and how it happened. Name any objects or substances involved and tell how they were involved. Give full details on all factors which led or contributed to the accident. If more space is needed, continue on other side.) I was attempting to dismantle a flow line but due to the inaccessibility of the line I had to get up under a grating, in an awkward position and, at the same time, pull on a pipe wrench above; because of these conditions my back was injured.				
28. NATURE OF INJURY (Name part of body affected—fractured left leg, bruised right thumb, etc. If there was a loss of a part of the body, describe.)	One or more ruptured discs in my back.			
29. HAVE YOU RECEIVED MEDICAL ATTENTION FOR THIS INJURY? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," give name and address of doctor, clinic, hospital, etc.) Dr. H.L. Givens; Dr. Thomas Haydel; Dr. Geo. Battalora, Jr. of Houma, La.; Dr. Kenneth Darrilleaux, Physio-therapist, Houma, La. Dr. H.L. Cohenour, 803 Jordan Street, Shreveport, La. Dr. Ray E. King, 803 Jordan Street, Shreveport, La.				
30. WAS SUCH TREATMENT PROVIDED BY EMPLOYER? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	31. ARE YOU STILL DISABLED ON ACCOUNT OF THIS INJURY? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	32. HAVE YOU DONE ANY WORK DURING THE PERIOD OF DISABILITY? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		
33. HAVE YOU RECEIVED ANY WAGES SINCE BECOMING DISABLED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," give dates on back)	34. HAS INJURY RESULTED IN PERMANENT DISABILITY OR AMPUTATION? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," describe on reverse)			
35. NAME OF EMPLOYER (Individual or firm name) Oils Engineering Company		36. NATURE OF EMPLOYER'S BUSINESS Oil Field Service		
37. ADDRESS OF EMPLOYER (Number, street, city, State, zip code) P.O. Box 14416, Dallas, Texas 75234		38. IF ACCIDENT OCCURRED OUTSIDE THE U.S., STATE WHETHER YOU ARE U.S. CITIZEN <input type="checkbox"/> YES <input type="checkbox"/> NO		
39. SIGNATURE OF PERSON CLAIMING COMPENSATION <i>Gaines Todd Huson</i>		40. DATE OF THIS REPORT April 16, 1966		

U.S. GOV. PRINTING OFFICE: 1965 O-350-000

FORM AF VED: BUDGET BUREAU NUM

1007-1

U.S. DEPARTMENT OF LABOR

BUREAU OF EMPLOYEES' COMPENSATION

EMPLOYER'S SUPPLEMENTARY REPORT OF ACCIDENT
OR OCCUPATIONAL ILLNESS

1. DEC CASE #

2. CARRIER'S #

This notice must be filed promptly with the Deputy Commissioner in every case in which (1) Form BEC-202 does not show date injured employee returned to work and (2) each time injured employee returns to work and later becomes disabled for work. If the employee was disabled for work more than 3 days, compensation payments should be reported on Forms BEC-206 and BEC-208. Medical reports are to be sent to the Deputy Commissioner promptly following first treatment and thereafter during continuance of treatment.

3. NAME OF INJURED EMPLOYEE (Type or print)		FIRST NAME Gaines	MIDDLE INITIAL T.	LAST NAME Huson
4. ADDRESS OF INJURED EMPLOYEE (Number and street, city, state, zip code) 838 Gum St. Houma, Louisiana				
5. DATE OF INJURY (Month, day, year) 12/13/65		6. NAME AND ADDRESS OF YOUR INSURANCE CARRIER Highlands Insurance Co., P. O. Box 2002, Houston, Texas		
7. PERIOD OF DISABILITY (Give inclusive dates)				
a. FROM (Month, day, year) 12/13/65		b. TO (Month, day, year) 5/23/66		c. DATE RETURNED TO WORK (Mo., day, yr.) 5/23/66 (light duty)
8. IF EMPLOYEE WAS DISABLED AGAIN AFTER DATE OF RETURN TO WORK SHOWN IN ITEM 7C ABOVE, GIVE BELOW EACH SUBSEQUENT PERIOD OF DISABILITY. USE INCLUSIVE DATES.				
a. FROM (Month, day, year)		b. TO (Month, day, year - inclusive)		c. DATE RETURNED TO WORK (Mo., day, yr.)
Released for regular duty		10/28/66		as per attached letter.
9. DID EMPLOYEE RECEIVE MEDICAL ATTENTION? <input type="checkbox"/> YES <input type="checkbox"/> NO (If "No," explain).				
10. IF YOUR ANSWER TO ITEM 9 IS "YES," GIVE NAMES AND ADDRESSES OF DOCTORS AND HOSPITALS PROVIDING TREATMENT, WITH DATES Dr. G. C. Bettalora, Jr. New Orleans, Louisiana				
11. NAME OF EMPLOYER (Individual or firm name) Otin Engineering Corporation, P. O. Box 390, Houma, Louisiana				
12. EMPLOYER'S ADDRESS (Number and street, city, state, zip code)				
13. SIGNATURE OF PERSON AUTHORIZED TO SIGN FOR EMPLOYER <i>Carol O. Robinson</i>				
14. OFFICIAL TITLE OF PERSON SIGNING District Office Manager				15. DATE OF THIS REPORT 3/10/67

Form BEC-210, June 1954. Edition of Oct. 1953 may be used.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20540. Price \$1.00 per copy.

PHYSICIAN'S REPORT OF INJURY

PATIENT	Name <u>G. T. Hudson</u> Age <u>24</u> Address <u>726 West Park Street</u> <u>Houma, La.</u> Married or single Occupation _____ Employed by <u>Self</u>	
HISTORY OF CONDITION	Date of Accident <u>12/13/65</u> 19____ History as described by patient <u>Working up a connection, patient hurt lower back.</u>	
X-RAY	Were X-rays taken? <u>NO</u> Where taken _____ Date taken _____ 19____ By whom _____ Findings _____	
DIAGNOSIS (Describe and locate character and extent of injury)	<u>Marked spasm, right lumbar area, bilateral</u>	
TREATMENT	Date of first treatment <u>2/14/66</u> Date of final treatment <u>See remarks</u> Was patient treated by anyone else? <u>Yes</u> When _____ By whom <u>See remarks</u> Was patient hospitalized? <u>NO</u> Date of admission _____ Date of discharge _____ Name and address of hospital _____ Is further treatment needed? <u>See remarks</u> For how long _____ Describe treatment given by you <u>Medication, muscle relaxing medication, hot packs, traction, bed rest.</u>	
CONTRIBUTING FACTORS	Is there any history or evidence of pre-existing injury, disease or physical impairment? <u>NO</u> If so, describe _____ In your opinion, is the above accident the only cause of disability? <u>Yes</u>	
PROGNOSIS (Include estimate of Total and Partial Disability, and of probable permanent results)	<u>REMARKS: Patient initially seen by Dr. Haydel, please refer to his first report. Patient referred to Dr. George Entolors.</u> Total disability estimate _____ weeks _____ days Ended _____ 19____ Partial disability estimate _____ weeks _____ days Ended _____ 19____ Estimated cost of medical treatment _____	

Date 2/17/67

19____

Signed

Thomas R. Givens, M.D.

Address

730 Belanger Street
Houma, Louisiana

FORM APPROVED: BUDGET BUREAU NUMBER

40-1097-1

U.S. DEPARTMENT OF LABOR

BUREAU OF EMPLOYEES' COMPENSATION

EMPLOYER'S SUPPLEMENTARY REPORT OF ACCIDENT
OR OCCUPATIONAL ILLNESS1. BEC CASE #
2. CARRIER'S #

This notice must be filed promptly with the Deputy Commissioner in every case in which (1) Form BEC-202 does not show date injured employee returned to work and (2) each time injured employee returns to work and later becomes disabled for work. If the employee was disabled for work more than 3 days, compensation payments should be reported on Forms BEC-206 and BEC-208. Medical reports are to be sent to the Deputy Commissioner promptly following first treatment and thereafter during continuance of treatment.

3. NAME OF INJURED
EMPLOYEE
(Type or print)

FIRST NAME

MIDDLE INITIAL

LAST NAME

Gaines

T.

Huson

4. ADDRESS OF INJURED EMPLOYEE (Number and street, city, state, zip code)

726 East Park Ave.

Houma, La.

5. DATE OF INJURY (Month, day, year)

12/14/65

6. NAME AND ADDRESS OF YOUR INSURANCE CARRIER

Highlands Insurance Co.

P. O. Box 2002 Houma,
La.

7. PERIOD OF DISABILITY (Give inclusive dates)

a. FROM (Month, day, year)

12/13/65

b. TO (Month, day, year)

5/23/66

c. DATE RETURNED TO WORK (Mo., day, yr.)

5/23/66

8. IF EMPLOYEE WAS DISABLED AGAIN AFTER DATE OF RETURN TO WORK SHOWN IN ITEM 7C ABOVE, GIVE BELOW EACH SUBSEQUENT PERIOD OF DISABILITY. USE INCLUSIVE DATES.

a. FROM (Month, day, year)

12/20/65

b. TO (Month, day, year - inclusive)

2/7/66

c. DATE RETURNED TO WORK (Mo., day, yr.)

5/23/66

9. DID EMPLOYEE RECEIVE MEDICAL ATTENTION? ☒ YES ☐ NO (If "No," explain)

10. IF YOUR ANSWER TO ITEM 9 IS "YES," GIVE NAMES AND ADDRESSES OF DOCTORS AND HOSPITALS PROVIDING TREATMENT, WITH DATES

Dr. Givens
Houma, La.

Huson has been released for light duty only.

11. NAME OF EMPLOYER (Individual or firm name)

Otis Engineering Corporation

12. EMPLOYER'S ADDRESS (Number and street, city, state, zip code)

P. O. Box 390 Houma, La.

13. SIGNATURE OF PERSON AUTHORIZED TO SIGN FOR EMPLOYER

W. R. H. Lee

14. OFFICIAL TITLE OF PERSON SIGNING

District Office Manager

15. DATE OF THIS REPORT

5/23/66

Part 2, P. 1, Nov. 15-61

STANDARD FORM FOR EMPLOYER'S SUPPLEMENTAL REPORT OF INJURY

Approved by I. A. L. A. N. C.

Send to—INDUSTRIAL ACCIDENT BOARD, AUSTIN, TEXAS
Penalty of \$1000 for failure to file.
See Section 7, Article 6307, Employer's Liability Law.

Copy to **HIGHLANDS INSURANCE COMPANY**
(Insurance Company)

P. O. BOX 3000, HOUSTON, TEXAS 77001
(Address)

State's Number	File:
Per:	Carrier:
	Employer:
Carrier's File No.	
(The spaces above not to be filled in by Employer)	

If Employer's First Report of Injury did not show that the injured had returned to work, an Employer's Supplemental Report of Injury should be completed and filed immediately after return to work of the employee, or at the end of sixty days. In the event of the death of the employee, this report should be filed immediately.

1. Name of Employer: **Otis Engineering Corporation**
SOCIAL SECURITY NO. **438-52-1344**
2. Office Address: No. and St. **P.O. Box 390** City or Town **Houston** State **La.**
3. Insured by: Name of Company **Highlands Insurance Co.**
4. Name of Injured (in full) **Grimes T. Hudson** Social Security No. **438052-1344**
(First Name) (Middle Initial) (Last Name)
5. Present Address: No. and St. **726 E. Park Ave.** City or Town **Houston** State **La.**
6. Date of Injury **Before 12/13/65** is **65** Day of week **Monday** Hour of day **X** A.M. P.M.
2/7/66
7. Date Disability began **2/7/66** Accident **12/13/65** is A.M. P.M.
8. Has injured returned to work? **yes** If so, date and hour **5/23/66** X A.M. P.M.
For light duty only
9. Is injured person earning same wages as before injury? **no** If not, explain **He was not able to return to the field. He will be on light duty-dispatching.**
10. If disability has not terminated, state probable date of termination of disability
11. Has injured died? **no** If so, date of death A.M. P.M.

Date of this report **5/23/66** Firm name: **Otis Engineering Corporation**
Signed by **W. A. [Signature]** Official Title: **Dist. Off. Rep.**
USD

PHYSICIAN'S REPORT OF INJURY

PATIENT	Name	Tod Huseon			Age	
	Address	726 East Park St.		Houma, La.	Married or single	
	Occupation	Employed by Otis Eng. Corp.				
HISTORY OF CONDITION	Date of Accident	12/13/65		19	History as described by patient Making up a connection, patient hurt lower back.	
X-RAY	Were X-rays taken?	No				
	Date taken	19		By whom		
DIAGNOSIS (Describe and locate character and extent of injury)	Findings					
	Hurled sprain, right lumbar area, bilateral					
TREATMENT	Date of first treatment	2/14/66		Date of final treatment	Patient still under treatment.	
	Was patient treated by anyone else	No		When	By whom Geo. Battalora	
	Was patient hospitalized	No		date of admission	Date of discharge	
	Name and address of hospital					
	Is further treatment needed	Yes		For how long	Undetermined	
CONTRIBUTING FACTORS	Describe treatment given by you Examination, muscle relaxing medication, hot packs, sedation and rest.					
	Is there any history or evidence of pre-existing injury, disease or physical impairment? No					
	If so, describe					
PROGNOSIS (Include estimate of Total and Partial Disability, and of probable permanent results)	In your opinion, is the above accident the only cause of disability? Yes					
	REMARKS: Patient initially seen by Dr. Heydol, please refer to his first report. Patient is referred to Dr. George Battalora for evaluation.					
	Total disability estimate	12/13/65 weeks		days	Ended	1/3/66 19
	Permanent disability estimate	2/14/66 weeks		days	Ended	Undetermined 19
	Estimated cost of medical treatment Patient still under treatment.					

Date 4/16/66 19

Signed Thos. H. Glvens, M.D.

Address 730 Bolinger St.
Houma, La.USDC
4-25
any

Part 2, Form Rev. 12-61

STANDARD FORM FOR EMPLOYER'S SUPPLEMENTAL REPORT OF INJURY

Approved by I. A. I. A. R. C.

Send to—INDUSTRIAL ACCIDENT BOARD, AUSTIN, TEXAS
Penalty of \$1000 for failure to file.
See Section 7, Article 3307, Employer's Liability Law.

Copy to HIGHLANDS INSURANCE COMPANY
(Insurance Company)

P. O. BOX 2002, HOUSTON, TEXAS 77001
(Address)

State's Number	File:.....
	Carrier:.....
For:	Employer:.....
Carrier's File No.	
(The spaces above not to be filled in by Employer)	

If Employer's First Report of Injury did not show that the injured had returned to work, an Employer's Supplemental Report of Injury should be completed and filed immediately after return to work of the employee, or at the end of sixty days. In the event of the death of the employee, this report should be filed immediately.

- Name of Employer: Otis Engineering Corporation
- SOCIAL SECURITY NO. 438-52-1344
- Office Address: No. and St. P. O. Box 390 City or Town Houma State La.
- Insured by: Name of Company Highlands Insurance Co.
- Name of Injured (in full) Gaines Ted Hugon Social Security No. 438-52-1344
(First Name) (Middle Initial) (Last Name)
- Present Address: No. and St. 1317 Division Ave. City or Town Houma State La.
- Date of Injury 2/11 1966 Day of week Monday Hour of day X A.M. P.M.
Refer to 12-13-66
- Date Disability began 2/7/66 1966 A.M. P.M.
- Was injured returned to work? NO If so, date and hour A.M. P.M.
- Is injured person earning same wages as before injury? If not, explain
- If disability has not terminated, state probable date of termination of disability
- Was injured died? NO If so, date of death A.M. P.M.

Ted came in from work February 7, 1966 with the flu. He went to the Dr. and found out he had additional illness occurring from his previous injury December 13, 1966

Date of this report 2-2-66

Firm name:

Otis Engineering Corp.

Signed by

W. R. H. Shaw

Official Title:

FORM APPROVED: BUDGET BUREAU NUMBER 44-11097-1

U.S. DEPARTMENT OF LABOR
BUREAU OF EMPLOYERS' COMPENSATIONLONGSHOREMEN'S AND HARBOR
WORKERS' COMPENSATION PROGRAMEMPLOYER'S SUPPLEMENTARY REPORT OF ACCIDENT
OR OCCUPATIONAL ILLNESS1. BEC CASE #
2. CARRIER'S #

This notice must be filed promptly with the Deputy Commissioner in every case in which (1) Form BEC-202 does not show date injured employee returned to work and (2) Each time injured employee returns to work and later becomes disabled for work. If the employee was disabled for work more than 3 days, compensation payments should be reported on Forms BEC-206 and BEC-208. Medical reports are to be sent to the Deputy Commissioner promptly following first treatment and thereafter during continuance of treatment.

3. NAME OF INJURED EMPLOYEE (Type or print)	FIRST NAME Gallies	MIDDLE INITIAL T.	LAST NAME Huson
4. ADDRESS OF INJURED EMPLOYEE (Number and street, city, state, zip code) 1317 Division Ave. Houma, La.			
5. DATE OF INJURY (Month, day, year) 2/7/66	6. NAME AND ADDRESS OF YOUR INSURANCE CARRIER Highlands Insurance Co. P. O. Box 2002 Houston Tex.		

7. PERIOD OF DISABILITY (Give inclusive dates)

a. FROM (Month, day, year)	b. TO (Month, day, year)	c. DATE RETURNED TO WORK (Mo., day, yr.)
8. IF EMPLOYEE WAS DISABLED AGAIN AFTER DATE OF RETURN TO WORK SHOWN IN ITEM 7C ABOVE, GIVE BELOW EACH SUBSEQUENT PERIOD OF DISABILITY. USE INCLUSIVE DATES.		
a. FROM (Month, day, year)	b. TO (Month, day, year - including)	c. DATE RETURNED TO WORK (Mo., day, yr.)

9. DID EMPLOYEE RECEIVE MEDICAL ATTENTION? ☒ YES ☐ NO (If "No," explain)

Please refer to Accident report 12-13-66

10. IF YOUR ANSWER TO ITEM 9 IS "YES," GIVE NAMES AND ADDRESSES OF DOCTORS AND HOSPITALS PROVIDING TREATMENT, WITH DATES

Dr. Givens
730 Bolanger
Houma, La.

11. NAME OF EMPLOYER (Individual or firm name)

Otis Engineering Corporation

12. EMPLOYER'S ADDRESS (Number and street, city, state, zip code)

P. O. Box 390 Houma, La.

13. SIGNATURE OF PERSON AUTHORIZED TO SIGN FOR EMPLOYER

W. R. Baker

14. OFFICIAL TITLE OF PERSON SIGNING

District Office Manager

15. DATE OF THIS REPORT

3/2/66

Form No. 8, P. 2

STANDARD FORM FOR SURGEON'S REPORT

State's Number	File: Carrier Employer
Carrier's File No.	
(The spaces above not to be filled in by Employer)	

The Patient	1. Name of Injured Person: <u>Ted Hucson</u> Age: <u>26</u> Sex: <u>Male</u> 2. Address: No. and St. <u>P. O. Box 390, Houma, La.</u> City or Town <u>Houma</u> State <u>La.</u> 3. Name and Address of Employer: <u>Otis Engineering Corporation</u>
The Accident	4. Date of accident: <u>12/13/65</u> Hour <u> </u> M. Date disability began <u>12/13/65</u> 5. State in patient's own words where and how accident occurred: <u>Patient strained his back while pulling a wrench.</u>
The Injury	6. Give accurate description of nature and extent of injury and state your objective findings: <u>Lumbo sacral strain.</u> 7. Will the injury result in (a) Permanent defect? <u>No</u> If so, what? <u> </u> (b) Facial or head disfigurement? <u> </u> (Permanent disability such as loss of whole or partial fingers, facial or head disfigurement, etc., must be accurately marked on chart on reverse side of this report.) 8. Is accident above referred to the only cause of patient's condition? <u>Yes</u> If not, state contributing causes: <u> </u> 9. Is patient suffering from any disease of the heart, lungs, brain, kidneys, blood, vascular system or any other disabling condition not due to this accident? <u>No</u> Give particulars: <u> </u> 10. Has patient any physical impairment due to previous accident or disease? <u>No</u> Give particulars: <u> </u> 11. Has normal recovery been delayed for any reason? <u>No</u> Give particulars: <u> </u>
Treatment	12. Date of your first treatment: <u>12/13/65</u> Who engaged your services? <u>Patient</u> 13. Describe treatment given by you: <u>Heat, analgesics, physiotherapy</u> 14. Were X-Rays taken? <u>Yes</u> By whom? <u>Haydel Medical Clinic</u> Name and Address <u> </u> When? <u>12/23/65</u> 15. X-Ray diagnosis: <u>Negative for fracture or dislocation</u> 16. Was patient treated by anyone else? <u>No</u> By whom? <u> </u> Name and Address <u> </u> When? <u> </u> 17. Was patient hospitalized? <u>No</u> Name and address of hospital: <u> </u> 18. Date of admission to hospital: <u> </u> Date of discharge: <u> </u> 19. Is further treatment needed? <u>Yes</u> For how long? <u>Undetermined</u>
Disability	20. Patient <u>was</u> able to resume regular work on: <u>Undetermined</u> 21. Patient <u>was</u> able to resume light work on: <u>Undetermined</u> 22. If death ensued, give date: <u> </u>
REMARKS: (Give any information of value not included above) I am a duly licensed physician in the State of <u>Louisiana</u> I was graduated from <u>L.S.U.</u> Medical School in <u>Nov. 1964</u> , <u>La.</u> Year <u>1964</u> Date of this report: <u>12/21/65</u> (Signed) <u>W. L. H. H. H.</u> This report must be signed personally by physician. Address: <u>502 Barrow St., Houma, La.</u> Telephone: <u>016-2150</u>	

USD/C

FD-203 APPROVED: BUDGET BUREAU NUMBER 64-R1097.1

U.S. DEPARTMENT OF LABOR
BUREAU OF EMPLOYEES' COMPENSATIONLONGSHOREMEN'S AND HARBOR
WORKERS' COMPENSATION PROGRAMEMPLOYER'S SUPPLEMENTARY REPORT OF ACCIDENT
OR OCCUPATIONAL ILLNESS

1. BEC CASE #

2. CARRIER'S #

This notice must be filed promptly with the Deputy Commissioner in every case in which (1) Form BEC-202 does not show date injured employee returned to work and (2) each time injured employee returns to work and later becomes disabled for work. If the employee was disabled for work more than 3 days, compensation payments should be reported on Forms BEC-202 and BEC-208. Medical reports are to be sent to the Deputy Commissioner promptly following first treatment and thereafter during continuance of treatment.

3. NAME OF INJURED EMPLOYEE → FIRST NAME MIDDLE INITIAL LAST NAME
(Type or print) Calvin T. Ikawa

4. ADDRESS OF INJURED EMPLOYEE (Number and street, city, state, zip code)

1317 Madison Ave., New Orleans, Louisiana

5. DATE OF INJURY (Month, day, year)

12/12/65

6. NAME AND ADDRESS OF YOUR INSURANCE CARRIER

Maritime Insurance Co., P. O. Box 2880, Houston, Texas

7. PERIOD OF DISABILITY (Give inclusive dates)

a. FROM (Month, day, year)

b. TO (Month, day, year)

c. DATE RETURNED TO WORK (Mo., day, yr.)

December 24, 1965December 29, 1965December 29, 1965

8. IF EMPLOYEE WAS DISABLED AGAIN AFTER DATE OF RETURN TO WORK SHOWN IN ITEM 7C ABOVE, GIVE BELOW EACH SUBSEQUENT PERIOD OF DISABILITY. USE INCLUSIVE DATES.

a. FROM (Month, day, year)

b. TO (Month, day, year - inclusive)

c. DATE RETURNED TO WORK (Mo., day, yr.)

9. DID EMPLOYEE RECEIVE MEDICAL ATTENTION? ☒ YES ☐ NO (If "No," explain)

10. IF YOUR ANSWER TO ITEM 9 IS "YES," GIVE NAMES AND ADDRESSES OF DOCTORS AND HOSPITALS PROVIDING TREATMENT, WITH DATES

Dr. H. Y. Lloyd, New Orleans, La.

11. NAME OF EMPLOYER (Individual or firm name)

Cable Engineering Corporation, P. O. Box 378, New Orleans, Louisiana

12. EMPLOYER'S ADDRESS (Number and street, city, state, zip code)

13. SIGNATURE OF PERSON AUTHORIZED TO SIGN FOR EMPLOYER

14. OFFICIAL TITLE OF PERSON SIGNING

15. DATE OF THIS REPORT

12/21/65

Form BEC-203, October 1965 (Formerly Form U-210-11, which is obsolete)

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20540 - Price \$1.00 per 100

GPO : 1965 O-710-115

USDC

Part 2, Form 1, Rev. 12-41

STANDARD FORM FOR EMPLOYER'S SUPPLEMENTAL REPORT OF INJURY

Approved by I. A. I. A. N. C.

Send to—INDUSTRIAL ACCIDENT BOARD, AUSTIN, TEXAS
Penalty of \$1000 for failure to file.
See Section 7, Article 8307, Employer's Liability Law.

Copy to HIGHLANDS INSURANCE COMPANY
(Insurance Company)

P. O. BOX 2808, HOUSTON, TEXAS 77001
(Address)

State's Number	File:
	Carrier:
For:	Employer:
Carrier's File No.	
(The spaces above not to be filled in by Employer)	

If Employer's First Report of Injury did not show that the injured had returned to work, an Employer's Supplemental Report of Injury should be completed and filed immediately after return to work of the employee, or at the end of sixty days. In the event of the death of the employee, this report should be filed immediately.

- Name of Employer: Otis Engineering Corporation
- SOCIAL SECURITY NO.
- Office Address: No. and St. P. O. Box 2808 City or Town Houston State Louisiana
- Insured by: Name of Company Highlands Insurance Co., P.O. Box 2808, Houston, Texas
- Name of Injured (in full) Gaines Ted HUGON Social Security No.
(First Name) (Middle Initial) (Last Name)
- Present Address: No. and St. 1917 Division Ave. City or Town Houston State Louisiana
- Date of Injury 12/13 1965 Day of week Monday Hour of day 11:55 A.M. P.M.
- Date Disability began 12/14/65 19 A.M. P.M.
- Has injured returned to work? Yes If so, date and hour 12/20/65 (light duty) P.M.
1/3/66 (regular duty)
- Is injured person earning same wages as before injury? Yes If not, explain
- If disability has not terminated, state probable date of termination of disability
- Has injured died? No If so, date of death A.M. P.M.

of this report 1/4/66Firm name: OTIS ENGINEERING CORPORATION

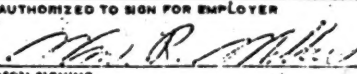
Signed by

Official Title: Gen. Mgr.

FORM APPROVED: BUDGET BUREAU NUMBER 44-11097-1

U.S. DEPARTMENT OF LABOR
BUREAU OF EMPLOYERS' COMPENSATIONLONGSHOREMEN'S AND HARBOR
WORKERS' COMPENSATION PROGRAMEMPLOYER'S SUPPLEMENTARY REPORT OF ACCIDENT
OR OCCUPATIONAL ILLNESS1. BEC CASE #
2. CARRIER'S #

This notice must be filed promptly with the Deputy Commissioner in every case in which (1) Form BEC-202 does not show date injured employee returned to work and (2) each time injured employee returns to work and later becomes disabled for work. If the employee was disabled for work more than 3 days, compensation payments should be reported on Forms BEC-206 and BEC-208. Medical reports are to be sent to the Deputy Commissioner promptly following first treatment and thereafter during continuance of treatment.

3. NAME OF INJURED EMPLOYEE (Type or print)	FIRST NAME Gaines	MIDDLE INITIAL T.	LAST NAME Huson
4. ADDRESS OF INJURED EMPLOYEE (Number and street, city, state, zip code) 1317 Navigation Ave., New Orleans, Louisiana			
5. DATE OF INJURY (Month, day, year) 12/13/63	6. NAME AND ADDRESS OF YOUR INSURANCE CARRIER Highlands Insurance Co., P.O. Box 2332, Houston, Texas		
7. PERIOD OF DISABILITY (Give inclusive dates)			
a. FROM (Month, day, year) December 14, 1963	b. TO (Month, day, year) December 15, 1963	c. DATE RETURNED TO WORK (Mo., day, yr.) December 19, 1963	
8. IF EMPLOYEE WAS DISABLED AGAIN AFTER DATE OF RETURN TO WORK SHOWN IN ITEM 7C ABOVE, GIVE BELOW EACH SUBSEQUENT PERIOD OF DISABILITY. USE INCLUSIVE DATES.			
a. FROM (Month, day, year)	b. TO (Month, day, year - inclusive)	c. DATE RETURNED TO WORK (Mo., day, yr.)	
9. DID EMPLOYEE RECEIVE MEDICAL ATTENTION? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If "No," explain)			
10. IF YOUR ANSWER TO ITEM 9 IS "YES," GIVE NAMES AND ADDRESSES OF DOCTORS AND HOSPITALS PROVIDING TREATMENT, WITH DATES. Dr. H. L. Haydel, New Orleans, La.			
11. NAME OF EMPLOYER (Individual or firm name) Gulf Engineering Corporation, P. O. Box 233, New Orleans, Louisiana			
12. EMPLOYER'S ADDRESS (Number and street, city, state, zip code)			
13. SIGNATURE OF PERSON AUTHORIZED TO SIGN FOR EMPLOYER 			
14. OFFICIAL TITLE OF PERSON SIGNING Navigation Office Manager		15. DATE OF THIS REPORT 12/21/63	

BEC-210, October 1963 (Formerly Form US-210-11, which is obsolete)

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20540 - Price \$1.60 per copy

GPO : 1963 O-210-111

Form S. P. 1

STANDARD FORM 1
EMPLOYER'S SUPPLEMENTAL
REPORT OF INJURY
 Approved by I.A.L.A.C.

State's Number For:	File: Carrier: Employer:
Carrier's File No. (The spaces above not to be filled in by Employer)	

If Employer's First Report of Injury did not show that the injured had returned to work, an Employer's Supplemental Report of Injury should be completed and filed immediately after return to work of the employee; or at the end of days. In the event of the death of the employee, this report should be filed immediately.

- Name of Employer Ochs Engineering Corporation
- Office address: No. and St. No. 2, Box 320 City or Town Monroe State Louisiana
- Insured by The Wardens Insurance Company Highlands Insurance Co.
- Name of Injured (in full) Calvin Ed Hubert
(First Name) (Middle Initial) (Last Name)
- Present address: No. and St. 1017 Louisiana Ave City or Town Monroe State Louisiana
- Date of Injury December 12, 1935 Day of week Tuesday Hour of day 11:55 A.M. P.M.
- Date disability began December 12, 1935 19 12 A.M. P.M.
- Has injured returned to work? yes If so, date and hour Monday, December 23, 1935 P.M.
- Is injured person earning same wages as before injury? no If not, explain released for light duty and doing dispatching instead of field work
- If disability has not terminated, state probable date of termination of disability _____
- Has injured died? no If so, date of death _____ A.M. P.M.

Only released for light duty. Additional supplemental will follow when released for regular duty.

Reported by W. J. J. J. Firm name Ochs Engineering Corporation
 Signed by W. J. J. J. Official Title Manager

FORM APPROVED: FIDDET BUREAU NUMBER 44-2887.3

U.S. DEPARTMENT OF LABOR

BUREAU OF EMPLOYERS' COMPENSATION

EMPLOYER'S FIRST REPORT OF ACCIDENT OR OCCUPATIONAL ILLNESS

SEE INSTRUCTIONS ON REVERSE

LEAVE ITEMS 1 AND 2 BLANK

1. SIC CASE NUMBER

2. CARRIER'S NUMBER

4. DATE OF INJURY (month, day, year)
12/13/65

6. ACCIDENT IS BEING REPORTED UNDER THE FOLLOWING ACT (Check one, see instructions on reverse)

☒ WORKER'S COMPENSATION ACT☐ WORKER'S COMPENSATION ACT☐ WORKER'S COMPENSATION ACT☐ WORKER'S COMPENSATION ACT☐ WORKER'S COMPENSATION ACT

20. IF INJURED ON A VESSEL, WHAT WAS BEING DONE TO, ON, OR FROM THE VESSEL? (Check one)

☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL☐ WORKING ON VESSEL

3. NAME OF EMPLOYEE (Print or type)		FIRST NAME Gaines		MIDDLE INITIAL Ted	LAST NAME Huson	
5. EMPLOYEE'S ADDRESS (Number, street, city, State, zip code) 1317 Division Ave., Houma, Louisiana						
7. SEX <input checked="" type="checkbox"/> MALE <input type="checkbox"/> FEMALE	8. AGE OR DATE OF BIRTH 26 /		9. SOCIAL SECURITY NUMBER 438 52 1344			
10. IN INJURY, DATE 6:00 A. M.	11. HOUR BEGAN WORK 11:55 A. M.		12. DID EMPLOYEE STOP WORK IMMEDIATELY? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			
13. DID INJURY CAUSE LOSS OF TIME SECOND DAY OR MORE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		14. DATE AND HOUR EMPLOYEE FIRST DID NOT RETURN TO WORK December 14, 1965		15. DATE AND HOUR PAY STOPPED December 14, 1965		
16. DATE AND HOUR EMPLOYEE RETURNED TO WORK N/A		17. OCCUPATION (Job title, occupation, employer, etc.) Wireline helper		18. NUMBER OF YEARS IN THIS OCCUPATION 2 yrs.		
19. INJURED WHILE DOING SUCH WORK? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If "no" explain in Item 25.)		20. YEARS IN YOUR EMPLOY 3 yrs.		21. NUMBER OF DAYS USUALLY WORKED PER WEEK FIVE		
22. WAGES OR EARNINGS (Include overtime, allowances, etc.)		23. HOURLY RATE FIVE		24. DAILY RATE FIVE		25. WEEKLY \$150.00
26. EXACT PLACE WHERE ACCIDENT OCCURRED (See instructions on reverse) CC Str. Chevron Oil, Bay Marchand, Levee, Lafourche Parish, Louisiana						
27. NAME OF FOREMAN OR SUPERVISOR AT TIME OF ACCIDENT Jim Tubbs, Service Specialist				28. EARLIEST DATE FOREMAN OR EMPLOYER KNEW OF ACCIDENT 12/13/65		
29. DESCRIBE IN FULL HOW THE ACCIDENT OCCURRED (Include the events which resulted in the injury or occupational disease. Tell what the injured was doing at the time of the accident. Tell what happened and how it happened. Name any objects or substances involved and tell how they were involved. Give full details on all factors which led or contributed to the accident.) I was lying under grating making up union when felt sharp pain in lower back, later when picked up tool box back again hurt severely.						
30. NATURE OF INJURY (Name part of body affected—fractured leg, lacerated right thumb, etc. If there was a loss of part of the body, describe.)		injured lower back				
31. IF YOU PROVIDED OR AUTHORIZED MEDICAL ATTENTION, GIVE DATE. IF NOT, EXPLAIN WHY December 13, 1965				32. DATE INSURANCE CARRIER NOTIFIED 12/16/65		
33. NAME OF PHYSICIAN				34. ADDRESS (Number, street, city, State, zip code)		
35. NAME OF HOSPITAL				36. ADDRESS (Number, street, city, State, zip code)		
37. NAME OF INSURANCE CARRIER Highlands Insurance Co.				38. ADDRESS (Number, street, city, State, zip code) P. O. Box 2002, Houston, Texas		
39. NAME OF EMPLOYER (Individually or firm name) Cris Engineering Corporation				40. ADDRESS OF REPORTING OFFICE (Number, street, city, State, zip code) P. O. Box 200, Houma, La.		
41. NATURE OF EMPLOYER'S BUSINESS oilfield sales & service				42. SIGNATURE OF PERSON AUTHORIZED TO SIGN FOR EMPLOYER		
43. OFFICIAL TITLE OF PERSON SIGNING THIS REPORT Division Office Manager				44. DATE OF THIS REPORT 12/16/65		

FORM BIC-702, SEP. 1963. (For only Form BIC-702, which is obsolete)

3-EMPLOYER INSURANCE CARRIER

Form No. 3, F. 1
**STANDARD FORM FOR
 EMPLOYER'S FIRST REPORT OF INJURY**
 Approved by I. A. I. A. B. C.

State's Number	File:
For:	Carrier:
	Employer:
Carrier's File No. _____	
(The Spaces above not to be filled in by Employer)	

Policy No. _____

Pol. Period _____

Employer	1. Name of Employer Otis Engineering Corporation 2. Office address: No. and St. P. O. Box 399 City or Town Houma State Louisiana 3. Insured by Highlands Insurance Co. P. O. Box 2002, Houma, Louisiana 4. Give nature of business (or article manufactured) oilfield sales & service Texas	
Time and Place	5. (a) Location of plant or place where accident occurred Bay Marchand, Icoville, Lafourche Ph., Louisiana Department _____ State if employer's premises _____ (b) If injured in a mine, did accident occur on surface, underground, shaft, drift or mill _____ 6. Date of Injury December 13 19 65 Day of week Mon. Hour of day 11:55 A. M. P. M. 7. Date disability began Dec. 14 19 65 A. M. P. M. Was injured paid in full for this day NO 8. When did you or foreman first know of injury December 13, 1965 9. Name of foreman C. Fesi	
Injured Person	11. Name of Injured Gcinon Ted Hugon (Social Sec. No.) 638 52 1344 (First Name) (Middle Initial) (Last Name) 12. Address: No. and St. 1317 Division Ave. City or Town Houma State Louisiana 13. Check (✓) Married <input checked="" type="checkbox"/> Single <input checked="" type="checkbox"/> Widowed <input checked="" type="checkbox"/> Widower <input checked="" type="checkbox"/> Divorced <input checked="" type="checkbox"/> Male <input checked="" type="checkbox"/> Female <input checked="" type="checkbox"/> White <input checked="" type="checkbox"/> Colored <input checked="" type="checkbox"/> 14. Nationality American Citizen of USA Speak English yes 15. Age 26 Did you have on file employment certificate or permit yes 16. (a) Occupation when injured Wreline helper (b) Was this his or her regular occupation yes (If not, state in what department or branch of work regularly employed) _____ 17. (a) How long employed by you 2 yrs. (b) Piece or time worker time (c) Wages per hour \$ Fluc. 18. (a) No. hours worked per day Fluc. (b) Wages per day \$ Fluc. (c) No. days worked per week Fluc. (d) Average weekly earnings \$ 150.00 (e) If board, lodging, fuel or other advantages were furnished in addition to wages, give estimated value per day, week or month travelling expenses	
	19. Machine, tool or thing causing injury _____ 20. Kind of power, (hand, foot, electrical, steam, etc.) _____ 21. Part of machine on which accident occurred _____ 22. (a) Was safety appliance or regulation provided _____ (b) Was it in use at time _____ 23. Was accident caused by injured's failure to use or observe safety appliance or regulation _____ 24. Describe fully how accident occurred, and state what employee was doing when injured I was lying under grating making up union when felt sharp pain in lower back, later when picked up tool box back again hurt severely. 25. Names and addresses of witnesses C. Fesi	
	26. Nature and location of injury (describe fully exact location of amputations or fractures, right or left) injury to lower back 27. Probable length of disability unknown 28. Has injured returned to work NO If so, date and hour _____ At what wage \$ _____ 29. At what occupation _____ 30. (a) Name and address of physician _____ (b) Name and address of hospital _____	
	31. Has injured died NO If so, give date of death _____	

Reported **12/13/65**

Firm name

OTIS ENGINEERING CORPORATION

Signed by

Official Title **Off. Mgr.**

MUSK, Mr. Ted

26 yrs.

11-14-66

726 E. Park Avenue, Houma

Wire line operator

Otis Engineering

TO: Crawford & Company
P.O. Box 1086
Houma, La.

RE-EXAMINATION:

Gentlemen:

The above patient was re-examined on 10-20-66, at your request.

He states he has been working steadily as a dispatcher since last being seen by us on 7-8-65. He states his back is much improved. He may have a catch in the back, at times, then the back will be painful for 2 or 3 hours and clear. This may occur every 2 or 3 weeks. He is performing his exercises. He is now weighing 223 pounds. In the standing position, there is no evidence of spasm in the back musculature. The left pelvis is slightly depressed. He is able to forward flex and touch his toes with a complete reversal of the lumbar lordosis. Extension and lateral bending are normal. Motion in both hip joints is complete. Straight leg raising is possible to 90 degrees on both sides. Reflexes in both lower extremities are present and equal, bilaterally. There are no motor deficits in either lower extremity. In the prone position, there is no evidence of muscle spasm and no complaints of tenderness with palpation over the lumbosacral spine.

X-RAY EXAMINATION: An x-ray examination of the lumbosacral spine was made in our office. Review of these films reveals no evidence of fractures or dislocation. All disc spaces appear normal. The oblique views reveal no evidence of laminar defects. The sacro-iliac joints appear normal.

OPINION: The orthopedic examination of this individual reveals no evidence of residual from a back injury sustained in December of 1965. He has a postural condition manifested by increase in the lumbar lordosis, and he is overweight. The depression of the left pelvis is on the basis of mild developmental shortening in the left lower extremity and this is easily corrected by utilization of the heel raise to the left shoe. The x-ray examination of the spine is entirely normal. We have advised him to continue his abdominal exercises and stay on a weight reduction

diet. We feel this individual could, at this time, resume his previous job as a wire line operator.

GCB:fp
Dictated, not read

G. C. Battalora, Jr. M.D.

HUSON, Mr. Ted

26 yrs.

7-8-66

726 E. Park Avenue - Houma, La.

Wire line operator

Otis Engineering

TO: Crawford and Company
P. O. Box 1036
Houma, Louisiana

The above patient was re-examined on 7/8/66. He had been initially examined by us on 4/15/66. He stated that his back had improved at that time and he was able to resume work at light duty on 5/23/66. He had performed exercises and had lost about 10 pounds weight. Since working he states he has suffered with constant pain in the lower back. This is not severe during the day and does not give him too much difficulty. The pain seems to increase after work and the back stiffens. At times the whole left leg becomes painful. Recently he has noted pain in the shoulder and the neck. He is presently working as a dispatcher.

The patient is obese. The abdomen is protuberant. Motion in the spine is within normal limits except for slight limitation in flexion. There is no spasm in the paravertebral musculature. Straight-leg-raising is possible to 75 degrees on either side and reflexes in both lower extremities are present and equal bilaterally. In the prone position there is no evidence of spasm. Tenderness is localized at the lumbosacral joint.

OPINION: This patient's difficulties again appear to be on the basis of a postural condition manifested by an exaggeration of a lumbar lordosis and obesity. We have advised him to get back on his weight reduction diet and to perform abdominal exercises. He was placed on a salicylate preparation to take at night to try and relieve his subjective complaints. We feel that if he would be conscientious on his diet and exercises that his present difficulties could be overcome. We do not feel that the pain he is having is severe in nature and it is our opinion that he is able to continue working. He has been requested to return in one month.

G. C. Battaloro, Jr., M.D.

GCB:tc
Dictated, not read.

CMA

JUL - 3 1966

USDC

DRS. BATTALORA, BATTALORA & DABEZIES
NEW ORLEANS, LA. 70119

NAME: JASON, Mr. Ted

AGE: 26

DATE: 4/15/66

RESIDENCE: 726 E. Park Avenue
Houma, Louisiana

OCCUPATION: wire line operator

EMPLOYER: Otis Engineering

INSURANCE CARRIER:

Crawford and Company
P.O. Box 1086
Houma, Louisiana

Gentlemen:

This patient was examined on 4/15/66 for back complaints at the request of Dr. Givens.

The patient states that he injured his back on 12/13/65 at work. He was lying on his side under a grating making a connection. As he gave a last hard pull on the wrench he felt something pull in the back. The back was extremely painful and he had to be helped out from beneath the grating. Later he bent to set his tool box and had severe pain in the lower back. He had to be flown in from the rig. He saw his physician and was examined and x-rayed. He was placed on drugs. He experienced some relief over the next several weeks and he tried to resume light duty on 1/14/66. He worked three weeks in the office and the back felt good. He then resumed working offshore. After lifting he experienced recurrence of low back pain with pain radiating to the right leg. He was placed at bed rest and drugs and more recently has received physiotherapy treatments to the back. He states that his condition is not improved.

At the present time he states that he has recurrent episodes of severe low back pain brought on by certain motion. When this occurs he has to go to bed for several days. The pain will then subside and he is relatively pain free for three to four days. He has a dull ache in the back at all times. He has difficulty in getting comfortable in bed. He has to guard his back when he is up and about. If the severe pain should occur it is associated with a shooting type pain into the right leg. He has no complaints of numbness or weakness in either lower extremity.

PAST HISTORY: He states that while in the service he suffered with a back ache on occasions but has no treatment. He had a fracture of his left knee cap at the age of 14 years. Since then the left leg has been shorter than the right. He has had no surgery in the past or serious illnesses.

PHYSICAL EXAMINATION: The injured is a 26 year old white male 5'11" in height, weighing 225 pounds. He states that he has gained approximately 20 pounds weight since the injury in December of 1965. In the standing position the abdomen is enlarged and protuberant. There is an increase in the lumbar lordosis. The left pelvis is slightly depressed.

page two

HUSON, Mr. Ted

4/15/66

There is no spasm in the paravertebral musculature. He is able to forward flex and touch the lower thirds of the tibiae with a normal reverse of the lumbar lordosis. Extension and lateral bending are within normal limits. He complains of pain at the lumbosacral joint at the extremes of all motion. Thigh circumferences in the middle thirds are equal at 23 3/4 inches, calf circumferences at the point of maximum diameter are 16 3/8 inches on the right and 16 1/2 inches on the left. The left lower extremity is one half inch shorter than the right lower extremity. Motion in both hip joints is complete and painless. Straight leg raising is possible to 90 degrees on either side. Patellar and ankle reflexes are present and equal bilaterally. There is no motor weakness in either lower extremity. There is weakness in the abdominal musculature. In the prone position there is no spasm in the paravertebral musculature. He complains of discomfort at palpation of the lumbosacral joint.

OPINION: This patient has sustained an acute lumbosacral strain injury. His condition responded to conservative measures initially but after resuming heavy work there has been a recurrence. Examination at the present reveals evidence of a postural condition in this individual manifested by an increase in lumbar lordosis, protuberance of the abdomen and marked weakness in the abdominal musculature. The 20 pound weight increase has certainly been an aggravating factor. Advice in this case at present would be that his physiotherapy treatments be continued with institution of exercises to rebuild the anterior support to the spine. We would also suggest that the left heel of his shoe be raised about one quarter of an inch to compensate for the developmental shortening in the left lower extremity. He has also been advised to get on a weight reduction diet. He is to be seen again in two weeks. At that time he is to bring in the x-rays which have been made on his spine for our review. A supplementary report will be submitted after the next evaluation.

ECB/s h
dictated, not read

G.C. Battalora, Jr.
G.C. Battalora, Jr., M.D.

(1) DEPOSITION OF FORREST BRADHAM

(Number and Title Omitted)

TESTIMONY OF FORREST BRADHAM, taken at the offices of Messrs. Phelps, Dunbar, Marks, Claverie & Sims, Attorneys-at-Law, Hibernia Bank Building, New Orleans, Louisiana, by agreement, beginning at 10:30 o'clock a.m., on November 5, 1968.

(2) APPEARANCES:

For the Plaintiff:

MESSRS. KIERR & GAINSBURGH,
Attorneys-at-Law,
National Bank of Commerce Building,
New Orleans, Louisiana

By: SAMUEL C. GAINSBURGH, Esq.

and

JESSE R. ADAMS, JR., Esq.

For Chevron Oil Company, The California Company Division:

MESSRS. McLOUGHLIN, BARRANGER, WEST,
PROVOSTY & MELANCON,
Attorneys-at-Law,
720 Hibernia Bank Building,
New Orleans, Louisiana.

By: LLOYD C. MELANCON, Esq.

For Third-Party Defendant Otis Engineering Corporation and Highlands Insurance Company:

MESSRS. PHELPS, DUNBAR, MARKS,
CLAVERIE & SIMS,
Attorneys-at-Law,
Hibernia Bank Building,
New Orleans, Louisiana

By: BLAKE WEST, Esq.

PAUL W. WILLIAMS,
Deputy Official Court Reporter.

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S T I P U L A T I O N

IT IS STIPULATED AND AGREED by and among (3) the various parties that the testimony of Forrest Bradham may be taken by agreement at the time and place hereinbefore noted; that the testimony of Forrest Bradham may be taken down in shorthand (Stenotype) by Paul W. Williams, and by him transcribed, the formalities of signing, sealing, and certification being waived, and all objections, save objections to the form of the question, being reserved to the time of trial.

IT IS FURTHER STIPULATED that the witness may be sworn by Paul W. Williams, Deputy Official Court Reporter in and for the State of Louisiana.

FORREST BRADHAM,

having been first duly sworn by the Reporter, was examined and testified as follows:

EXAMINATION

BY MR. MELANCON:

Q Mr. Bradham, what is your full name, age, and present occupation? A My name is Forrest Bradham, Otis Engineering, Wireline Specialist A, Age 37.

Q Your middle initial is what, sir? A None.

Q Just Forrest Bradham? (4) A Yes, sir.

Q Where do you reside? A 1209 Lake Drive, Longview.

Q That is Longview, Texas? A Yes, sir.

Q And for how long have you been so employed by Otis? A Five years.

Q And during that five-year period of time, what job classifications have you had, starting from the earliest up to the present?

A From Wireline Helper D to Wireline Specialist A.

Q Wireline Helper D? A Yes, sir.

Q To Specialist What? A A.

Q Now, are there any other in-between classifications between the D and the A?

A Yes. Well, you work up from D Helper to C and B and A Helper, and then you start off on operators as D, C, B, and A.

Q D, C, B, and A? A Yes, sir.

(5) Q All right. Now, how do you get to be a specialist A? A How do you?

Q Yes. A Well, it's just your knowledge of the oil field, I guess, and work.

Q You were Wireline Helper D, C, B, and A, then Operator D, C, B, and A, and Specialist D, C, B, and A? A No, sir, just Wireline Specialist.

Q Wireline Specialist? A Yes, Operator.

Q Operator, but that was Wireline Specialist Operator, D, C, B, and A? A Yes, sir.

Q In effect, you have gone through 12 classifications? A No, sir, just eight.

Q Oh, I see. Now, on December 17, 1965, what was your classification, sir? A Wireline Specialist A.

Q And of course on that day you were employed by Otis? A Yes, sir.

MR. WEST:

(6) Off the record.

(Discussion off the record.)

MR. MELANCON:

There has been some discussion off the record in connection with the date I just mentioned; however, I would like to have the witness answer the questions I pose to him, and if there is any discrepancy, I would like to have him explain it.

MR. WEST:

I am not objecting, I just wanted to explain that to you.

MR. MELANCON:

All right.

BY MR. MELANCON:

Q On December 17, 1965, sir, what was your capacity or classification? A Wireline Specialist A.

Q On that particular day, sir, December 17, 1965, where and what area were you working for Otis? A Longview.

Q Longview, Texas? A Yes, sir.

(7) Q Do you recall the exact location or whereabouts in Longview, Texas, you were employed with Otis on December 17, 1965?

A No, sir, not that particular day.

Q Is there anything of that particular day that would refresh your memory with respect to any unusual event that occurred? A No, sir, not as I recall.

Q All right, sir. And do you recall or have you any recollection who you were employed with of Otis Engineering on December 17, 1965? Were you working by yourself or with a crew? A I was working with a crew, I am sure, if I was on a job that date. I don't know whether I was on a job at that time or not.

Q Prior to coming to this deposition today or in the recent past, have you had occasion to review your company's records or your job work tickets or whatnot for December 17, 1965?

A No, sir.

Q Do you make up job tickets or work tickets? A Yes, sir, but in our office they are disposed of after a year or two years or three (8) years, something of that nature.

Q Do you know a Mr. Gaines Ted Huson?

A Yes, sir.

Q Is it possible that Mr. Gaines Ted Huson was working with you on December 1 1965?

A If he was employed at Longview at the time, it's possible he would have been working with me.

Q He was employed in that area of Longview, Texas?

MR. WEST:

He said "if he was."

THE WITNESS:

I am not familiar on the date he was, he was up there for a short while.

BY MR. MELANCON:

Q Did Mr. Gaines Ted Huson work for Otis Engineering at any time? A Yes, sir, at any time, yes.

Q Do you recall the period of time that Mr. Gaines Ted Huson worked for Otis Engineering? A Well, the only time that I could definitely say Ted worked for Otis was while he was in Longview.

(9) Q And -- A That was a short period, say, two or three months.

Q Two or three months. Do you have any idea of what months or what year we are speaking of? A Oh, it was in the summer months, but what year I don't recall.

Q In the summer months? A Yes, 'sir.

Q What type of job classification did Mr. Gaines Ted Huson have with Otis during the summer months that you were aware he was employed by Otis? A He was a wireline helper.

Q A wireline helper? A And what his classification was, I don't know.

Q Well, now, during these summer months that Mr. Huson was employed by Otis, was his classification above yours in rank or lower than yours in rank? A Lower.

Q Were you his immediate supervisor or pusher or bossman? A If we were out on a job and he was with me on (10) the job, I was, yes.

Q Do you specifically have any recollection of working with Mr. Huson in the employ of Otis on a CC Structure located in the Bay Marchand area of the Gulf of Mexico, approximately 20 miles offshore, south of Leesville, Louisiana? A Definitely not. I would say Ted worked with me in Longview.

Q You had never worked offshore with him? A No, sir.

Q When Mr. Gaines Ted Huson worked with you in the summer months that you previously referred to, do you recall him having any disability or accidents or injuries? Any physical disability, I am referring to.

A If he did, I sure wasn't aware of it,

because I would have had to notice it definitely if he would have been injured or anything while he was out on the job with me.

Q And what would be the normal or customary thing you would have done if Mr. Gaines Ted Huson manifested any physical disability, had an accident or injury during the summer months that you mentioned you (11) worked with him? A Well, if it would have been a serious injury, I would have had to carry him to a hospital or doctor, and I would have had to make out an accident report on it.

Q Is this a written report form?

A Yes, sir.

Q And is this the usual and customary thing that you do for Otis in connection with an accident or injury? A Definitely.

Q On the job? A Not on the job, sir, but when you get in from a job, you have to report an accident.

Q And you have no recollection of doing any of this? A No, sir, definitely not.

MR. MELANCON:

In view of the fact that this witness has been brought from a long distance and a copy of the complaint that was served upon Chevron Oil Company, January 15, 1965, I call upon the Plaintiff to advise us whether they are going to file an amendment to the (12) complaint or whether there is some other information in the possession of Plaintiff presently that reflects other information than is alleged in Paragraph 5 of the complaint, setting forth a specific accident and date. In other words, is Plaintiff going

to rely upon this date and this accident in this lawsuit, or do they -- does the Plaintiff intend to file an amendment on it?

MR. GAINSBURGH:

Well, --

MR. MELANCON:

I say this in all frankness. The man is here, and I would like to proceed with the interrogation. If there is another accident on another date involved and this is perhaps an error or inadvertence; if it isn't, I don't know any reason why I want to go forward with the deposition of this man at this time.

MR. GAINSBURGH:

Mr. Melancon, I am somewhat at a loss to (13) understand your question of me, if it is a question. We have filed a complaint in this matter. You have filed on behalf of your client 39 interrogatories, some of which have sub parts, which Mr. Huson has attempted to answer in accordance with applicables Federal Rules of Civil Procedure, and I am going to, with all deference, suggest that my preceding statement be taken as an answer to your question.

MR. MELANCON:

Well, I didn't mean to banter with you, Mr. Gainsburgh, but all I am interested in is knowing, and by my best appreciation of the answers that the Plaintiff has given to the interrogatories and the specific allegation in Article 5, suggests that he had an accident that is the basis of this lawsuit on December 17, 1965. Now, if there is

another date involved, I would ask you to please tell me where I might find it in here (14) so that I can interrogate this man on it if he has any information about it.

MR. GAINSBURGH:

Well, Mr. Melancon, it seems to me, sir, that you have interrogated the witness about the date alleged in the complaint. The witness told you that he knows nothing about Mr. Huson on that date, that he worked with Mr. Huson in Longview, Texas, and it would seem to me that your interrogation of this witness should proceed along the lines of his knowledge, if you care to interrogate him about it.

MR. MELANCON:

Well, --

MR. GAINSBURGH:

I don't think it's appropriate at this time because the witness, who has been produced, I assume, at your request, this witness doesn't have knowledge of an incident which is alleged in the complaint, and I (15) don't know how to reply to your question. I certainly don't want to banter with you, and you know very well I don't want to be rude in any way.

MR. MELANCON:

All I am asking is this: Is it possible there could be another date involved with respect to Plaintiff's accident other than December 17, 1965, as alleged in the complaint?

MR. GAINSBURGH:

I think this is the date on which the Plaintiff sustained the injury for which this suit is brought, Mr. Melancon, and I don't want to preclude myself from making any amendments in the future with respect to this or any other dates, sir, and therefore I specifically reserve my rights to do so.

MR. MELANCON:

That is all I am really interested in knowing, because if there is a possibility that there are other dates involved, (16) then I would ask to have the right to redep-
ose this witness in connection with the possibility of another date being involved, because he is not in this area, not subject to a subpoena, and I certainly want to get that information.

MR. WEST:

If you want the information, now is the time to get it.

BY MR. MELANCON:

Q Let's go on just a minute. Have you ever worked for Otis in this area, in the area I am speaking of, in the area of South Louisiana, offshore, sir? A At one time.

Q About what year? A It would have to have been in '59. I came down as a helper.

Q All right. A So I wouldn't have been a supervisor in any condition.

Q Do you recall for what period of time you were, a couple of days, a couple of months,

or what, in 1959? (17) A That I was offshore?

Q Yes.

MR. WEST:

I think the question was offshore working with Mr. Gaines Ted Huson, and I think we had better clarify the question.

MR. MELANCON:

No, this witness, I asked him if he ever worked in the offshore area of Louisiana, the New Orleans area.

MR. WEST:

I thought you asked him about working with Gaines Ted Huson.

MR. MELANCON:

No.

THE WITNESS:

I worked a week. It would have had to have been in '59, but in what month I don't know.

BY MR. MELANCON:

Q Was this offshore? A Yes, sir.

Q And it was with Otis? A Yes, sir.

(18) Q Now, have you worked in any other period of time since then off the Coast of the State of Louisiana? A Definitely not,

no.

Q So all of your work since 1959 that you have had with Otis has been in and about the Longview, Texas area? A Yes, sir.

Q All right. Now, have you ever worked, and I believe you have answered this, but just to clarify this, have you ever worked with Mr. Gaines Ted Huson at any other time besides the two or three months, summer months, that you mentioned in your previous testimony? A No, sir.

Q And those two or three months are summer months that you referred to, you can't tell me with any degree of certainty the year, but it occurred in and about the Longview, Texas area? A The year that Ted was working in Longview?

Q The two or three months that you spoke of, summer months. A I sure don't remember the year, I sure don't.

(19) Q But that did occur, whatever work it was in the Longview -- in and about the Longview, Texas area? A What did occur?

Q The work that you worked with Ted Huson. A Definitely.

Q That is the only time that you were connected with him in employment with Otis? A Definitely.

Q And by stretching your recollection as far back as you can and associating it with events of times, is there any way that you can give me some degree of an idea what year this was that you were working with Gaines Ted Huson for these two or three summer

months? Could it go back as far as 1959?

A No, sir.

Q I see. Before that or after that?

A It was after that.

Q Would it have been the last five years?

A Yes, sir.

Q Would it have -- A In the last five years.

Q Would it have been in the last year?

(20) A I just don't remember. I would have to look that up, what year he was up there, because we have a large turnover in employees. It is hard to remember someone that doesn't stay there any longer than that period of time.

Q Would anybody else besides yourself in the employ of Otis have had any connection with Mr. Gaines Ted Huson in the Longview, Texas area during this two or three months of summer work? A Yes, sir.

Q Who? A Well, it could have been any Otis employee in that Longview area.

Q Can you give me the names of any Otis employees who might have been or would have been? A Working with Ted?

Q At that time, not necessarily with him.
A On that three-month period?

Q Anybody at all who might have come into contact with him who was in the employ of Otis. A Yes, I can give you the whole Longview roster, and that would be it.

Q Yes, sir, go ahead. (21) A I would

say Calvin Clark.

Q Who is Mr. Calvin Clark? A The District Manager.

Q All right. A Norris Denson.

Q How do you spell that? A D-e-n-s-o-n.

Q What is his classification? A Commodity man.

Q All right. A And G. W. Skinner.

Q What is his classification? A He is a Wireline Specialist A.

Q All right. A And Richard Kerzee, he could have worked with Richard Kerzee.

Q How do you spell his last name? A K-e-r-z-e-e.

Q What is his classification? A Salesmen, and I believe that is all I can remember right now he could have worked with.

Q That is in that period of time you are referring to, the summer months, two or three months? A Yes, sir, that Ted was in the Longview area.

(22) Q Now, to the best of your knowledge, sir, have you, in the employ of Otis, ever worked on any Chevron Oil Company, the California Company Division, oil wells, equipment, or otherwise? A In the Longview area?

Q Anywhere, sir. A Yes, sir.

Q Where? A It would be in North Louisiana.

Q When was this, sir? A I don't recall.

Q In the last five years? A Yes, sir.

Q The last year? A I don't recall working with him in the last year.

Q In any event, sir, in connection with whatever work that you performed for Otis on Chevron Oil Company, The California Company Division, wells, equipment, or otherwise, to your knowledge did Mr. Gaines Ted Huson jointly work there on with you? A Not to my knowledge.

(23) Q And did any of this period of time that you previously referred to, two or three months summer work that you were engaged in with Gaines Ted Huson, was any of that work performed on any of Chevron Oil Company, The California Company, wells, equipment, or property? A I don't know.

Q Do you know of any operations of Chevron Oil Company, The California Company Division, in the Longview, Texas area? A Well, you would have to rephrase that a little bit, I think, before I understand it.

Q Do you know of any operations, wells, equipment, or otherwise, the property of Chevron Oil Company, The California Company Division, in and about the Longview, Texas area? A In North Louisiana, yes.

Q And in your Longview, Texas area, this encompasses the North Louisiana area? A Yes, sir.

Q And this was true, sir, during the period of time that you previously referred to, two or three months summer work when Gaines

(24) Ted Huson was working with you? In other words, during that period of time, Chevron would have had operations out of the Longview, Texas area? A It is possible, but --

Q But you don't know for certain? A No, sir.

Q At this time, sir, do you have any idea or knowledge of any oil wells, equipment, or otherwise that Mr. Gaines Ted Huson worked on for Otis while in Otis' employ during this two or three months' summer work that you previously referred to? A No, sir, I don't recall any specific well.

Q And who in the employ of Otis would have such information available now, sir?

A It is on file in our office. That is, within the last year. Now, what they do after the year's period, I don't know.

Q And that would come under the jurisdiction of Mr. Calvin Clark, the District Manager? A Yes, sir.

MR. MELANCON:

At this time, Chevron Oil Company has no further questions of this witness; (25) however, in view of the observations made during the deposition, Chevron Oil Company reserves its right to perhaps recall this witness in the event some amendment appears or some change in the pleadings occur.

EXAMINATION

BY MR. GAINSBURGH:

Q Mr. Bradham, you do specifically recall

for a period of time which you estimate at, as I understand it, a couple of months, you do specifically recall having as your helper or one of your helpers Mr. Gaines Ted Huson? A Yes, sir.

Q You do specifically recall that you worked with Mr. Huson as your helper in and around Longview, Texas? A Yes, sir.

Q You do specifically recall that Mr. Huson had no accident while he was working with you in Longview, Texas? A If he did, I certainly wasn't aware of it. It didn't interfere with his work.

Q Do you not recall his having any accident whatsoever? (26) A I do not.

Q And if he had, you would have made a report of that? A It would have been reported, definitely.

Q And it would have been reported by you, if it happened while he was working as your helper? A Yes, sir.

Q On the job? A If it would have been a major injury, I would have to.

Q Did you know Mr. Huson before he worked as your helper in Longview, Texas? A No, sir.

Q Is that the first time you ever met or saw him? A Yes, sir.

Q To the best of your knowledge? A Yes, sir.

Q Have you worked with or seen Mr. Huson since you and he worked together in Longview,

Texas? A No, sir, I haven't, I haven't seen him.

MR. GAINSBURGH:

We have no further questions of Mr.
(27) Bradham at this time.

EXAMINATION

BY MR. WEST:

Q You said a few moments ago that if Mr. Huson had an accident in Longview, Texas, it didn't interfere with his work. What do you mean by that? Would you explain that.

A Well, I think if he would have had, with just the two of us on the job, if he would have had an accident to interfere with his work. I would have definitely known because I would have had to do his work along with mine.

Q Could you tell us whether or not he was able to do his work when he was working with you. A He was a real good worker.

Q What kind of work was this that you are talking about? A Wireline helper.

Q Generally, what do the duties consist of? A Well, his main job is helping rig up, rigging up your equipment on the well head.

Q Does that require lifting heavy objects? A Well, it depends on what you are going to (28) classify as "heavy objects." I mean, it's normal procedure, there is nothing out of the ordinary about it.

MR. WEST:

That's all the questions I have.

EXAMINATION

BY MR. GAINSBURGH:

Q Mr. Bradham, let's talk about some of the objects that you and the helper would have to handle in the course of this main job of rigging up. You would have to handle whatever tools you were going to put in the hole, wouldn't you? A Yes, on top of the well head.

Q And what size is the equipment that you put on top of the well head, other than the lubricator and the gin pole, stuff like that? A Well, what else do we have?

Q Yes. A We have a wireline valve.

Q All right. What is the approximate size and weight of the wireline valve that you customarily use? A Probably 112 pounds.

(29) Q And what is the approximate length and weight of your lubricator? A The normal rig-up, it's 16 feet long, and it's divided into two sections, eight feet, and it probably weighs 50 pounds each section.

Q And I would take it that you and your helper assist each other in carrying the 100 pound weights or so? A Yes, sir, that is correct.

Q Not only because of the weight, but because of the bulkiness of the equipment. Is that so? A Well, it's more or less because of the weight, because it's not that bulky.

MR. GAINSBURGH:

I have no further questions at this time.

EXAMINATION

BY MR. MELANCON:

Q Were there any other pieces of equipment, tools, paraphernalia, anything else, that you and Mr. Gaines Ted Huson would have been handling when you worked together over in Longview, Texas, to do the work that was being done at that time besides (30) the wireline valve of 112 pounds, roughly, and a lubricator of about 50 pounds for each section or a total of 100 pounds? A Approximately, the weight is approximately.

Q Are there any other pieces of equipment?
A You have a gin pole.

Q How long is the gin pole? A It's approximately ten feet.

Q How much does it weigh? A Approximately 80 pounds.

Q All right. Anything besides the wireline valve, the lubricator, and gin pole?
A The rope blocks.

Q All right. How much do they weigh?
A Probably 30 pounds.

Q More than one? A No, sir, one.

Q All right. Anything else? A No, sir, that's the normal rig-up.

Q And how did you get to the job site in and about Longview, Texas, area when you

were working with Gaines Ted Huson? A Well, it's possible I would have went in a pickup and Ted drove a wireline unit, or (31) it's possible we could have both went in the wireline unit.

Q What is a wireline unit, is that a truck, automobile? A It's a truck.

Q Do you have any idea of the weight? What classification -- A Around 15,000.

Q 15,000 pounds? A Yes, sir.

Q And you say either you or Mr. Huson could have driven that truck? A Yes, sir.

Q Do you have any tools besides this truck and this other equipment that you mentioned? A Not under a normal job.

Q How are those tools carried, individually or in a kit of some sort, or what? A They are carried in racks in the wireline unit.

Q Can you give us any idea of the approximate weight of one of these racks or whatever it is that you pick up the tools with? A They are built in the unit itself.

Q So you remove each tool individually? (32) A Yes, sir, from the rack in the truck.

Q Are there any unusually heavy tools other than, say, a wrench or hammer or things of that sort, that are encountered in this type of work? A No, sir.

Q So that the pieces of equipment that you previously mentioned would consist of the heavy items -- A Yes, sir.

Q -- that were involved in that type of work? A Yes, sir.

Q Did you observe any difficulty or inability of Mr. Huson during these two or three months' summer work that you worked with him in handling and assisting you with the 112-pound wireline valve, the 16-foot 100-pound lubricator, the gin pole of ten feet long, 80 pounds, or the rope block of 30 pounds, or the operation if he did, of the roughly 15,000-pound wireline unit truck, that is --
A No, sir. Like I said a while ago, Ted was definitely a good worker.

Q He didn't complain to you, to your knowledge, (33) about anything of that sort?
A Not to my knowledge.

MR. MELANCON:

I have no further questions.

MR. GAINSBURGH:

No further questions.

MR. WEST:

No further questions.

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(34)

C E R T I F I C A T E

I, the undersigned, a Deputy Official Court Reporter in and for the State of Louisiana, authorized and empowered by law to administer oaths and to take the depositions of witnesses under L.R.S. 13:961.1, as amended, do hereby certify that the above and foregoing deposition is true and correct as taken

by me in the above-entitled and numbered cause (s).

I further certify that I am not of counsel nor related to any of the parties to this cause or in anywise interested in the event thereof.

NEW ORLEANS, LOUISIANA, on the 11
day of November, 1968.

s/Paul W. Williams
DEPUTY OFFICIAL COURT REPORTER
STATE OF LOUISIANA.

...oOo...

(1) DEPOSITION OF MR. CARMEL FESI,
JANUARY 20, 1969

(Number and Title Omitted)

Deposition of CARMEL FESI, taken in the above entitled cause, before George E. Hayes, an Official Court Reporter, authorized to administer oaths of witnesses pursuant to Section 961.1 of Title 13 of the Louisiana Revised Statutes of 1950 as amended, pursuant to the following stipulation, given in the offices of Phelps, Dunbar, Marks, Claverie & Sims, Hibernia Bank Building, New Orleans, Louisiana, on the 20th day of January, 1969.

APPEARANCES:

KIERR & GAINESBURGH
(BY: SAMUEL C. GAINSBURGH, ESQ.
AND
JESSE R. ADAMS, JR., ESQ.)
For the Plaintiff

MC LAUGHLIN, BARRANGER, WEST, PROVOSTY
& MELANCON

(BY: LLOYD C. MELANCON, ESQ.)
For Chevron Oil Company

(2) PHELPS, DUNBAR, MARKS, CLAVERIE & SIMS
(BY: BLAKE WEST, ESQ.)

For Otis Engineering Corp.
& Highlands Insurance Co.

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REPORTED BY:

George E. Hayes,
Official Court Reporter.

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(3) S T I P U L A T I O N

It is stipulated and agreed that the testimony of CARMEL FESI, is hereby being taken pursuant to the Federal Rules of Civil Procedure for purposes of discovery. All formalities, including those of signing, sealing, certification and filing are waived. All objections except those as to the form of the question are reserved until the time of the trial of the cause.

CARMEL FESI, 113 Estate Drive, Houma, Louisiana, a witness named in the above stipulation, being first duly sworn in the cause, testified on his oath as follows:

BY MR. MELANCON:

Q Would you tell us your full name?

A Carmel Joseph Fesi.

Q Where do you reside, sir? A 113 Estate Drive as of December 12, '68.

Q Now, where is this, sir? A Houma.

Q Houma, Louisiana? A Yes.

Q Are you presently employed by anyone, sir? A I'm off on the injured list, I have been since (4) August 18, 1967, I was hurt on the job.

Q August 18th, what? A 1967.

Q Well, are you receiving any -- A Receiving Workmen's Compensation and Social Security.

Q Workmen's Compensation from whom, sir? A Highlands Insurance Company.

Q And what employer are they paying that in behalf of? A Pardon?

Q What employer are they paying the compensation in behalf of? A Otis Engineering Corporation.

Q Are you here today in response to a subpoena? A That is correct.

Q And would you please produce the subpoena?

MR. MELANCON:

I would ask the Court Reporter to make a copy of this subpoena and also a copy of the Notice and return the copy of the subpoena to me, please, but attach the subpoena and the Notice to the deposition in connection with it.

BY MR. MELANCON:

(5) Q What amount of money did you receive for this subpoena, sir, to be here today?

A \$31.46, I believe it was.

Q Did you cash the check, sir? A Yes, I did, this morning.

Q And you are here in furtherance of this check being paid to you and this subpoena, are you not, sir?

MR. GAINSBURGH:

Excuse me just a moment.

(Discussion was held off the record.)

BY MR. MELANCON:

Q How long, sir, were you employed by Otis?

A November, I think it was, I'm not sure, the 18th or 19th, '59. And then I quit for forty-five days in 1964, I was in Corpus Christi working for Otis at the time, I quit in February, I don't remember the date, and went back to work here in Houma in April, I don't remember that either, of '64, that same year.

Q So more or less on a continuous basis you have been employed with Otis except for these two instances were you left, since 1959?

A That's right.

Q Now, when did you last work full-time, what day (6) was that that you last worked full-time for Otis? A Well, I attempted to go to work in January of last year, I asked for a release from my doctor to attempt to go back to work and I went offshore, it was

on a job for Gulf Oil Company in Block 210 as the third man just to observe, I mean, just get the feel of things and I was -- and I had intended to spend a week, seven full days out there and on the third day I began hurting real bad and on the fourth day I asked the field foreman if I could come in, the pain went up the back of my neck and started down my right arm, and it's been numb since then.

MR. WEST:

For the record, since then, I want to ask Counsel what he thinks is the relevancy of these questions as to this gentleman's injury subsequent to the time of the accident which is referred to in the plaintiff's complaint.

MR. MELANCON:

Counsel has no interest in the injury that this man has sustained and simply asked (7) him a question and the witness went on to tell us a lot about something, frankly, that I'm not interested in, and I simply asked you the dates that you last worked for Otis prior to your being on this compensation, I believe your testimony is it's January, 1968, is it not, sir? A That's right.

Q Now, let's go back a little bit before that, sir, when was it that you last worked for Otis prior to January, 1968, I assume there was an interval you were off duty, you say came back to work in January, 1968?

A I acquired the injury on August 18, 1967.

Q So that would be really the last full-time work you had accomplished for Otis?

A That's right.

Q Now, on August 18, 1967 what was your capacity with Otis? A Wireline specialist A.

Q Now, for how long a period of time before August, 1967 did you enjoy that position, sir? A Let's see, I made A operator, we call them operators, a year before that, I guess, let's see, it was August, sometime in '66, the (8) beginning of the year I think.

Q Early part of 1966? A Yes, or the latter part of '67, I'm not sure.

Q And what was your classification before becoming a wireline specialist A in early of 1966? A Wireline specialist B.

Q All right. And how long were you a wireline specialist B? A I don't remember.

Q Well, was it as long as a year, sir? A It was a year or more, at least a year.

Q Can we go back to December, 1965, is it a fair statement to say you were a wireline specialist B for Otis during that time? A I think so, I'm not sure, as far as I can remember.

Q And let's go back to when you first started out with Otis in 1959, what was your classification there? A Wireline helper D.

Q So you have gone up from wireline helper D all the way through the classifications that would normally be accounted in your company to the specialist A, sir? A That's right.

Q Does that work entail both offshore and onshore (9) in the Louisiana area? A Yes,

Louisiana and Texas, I worked there for three years.

Q Do you recall the date of December 17, 1965, sir? A It didn't ring a bell to me until I received this subpoena, I didn't even know the date, I didn't even know the month.

Q Now, you say it rang a bell when you got the subpoena? A I remember the injury this man acquired while he was working as my helper.

Q Well, now, specifically, sir, we asked you to bring with you any oral transcribed written statements that you may have made or given in connection with that date, did you make any, sir? A No, I sure didn't make any oral or written statements.

Q To anybody? A No. The only person I talked to about this was Mr. West just before I came here.

Q All right. Now, going back to when you received this subpoena you said it rang a bell, what did it bring back to your memory? A The date this man was injured.

(10) Q All right. A I didn't know the date previous to that, I mean, I didn't have it in my mind, I didn't even know what month or what year it was until I saw it on this subpoena.

Q Now, we are referring here to the plaintiff, Mr. Gaines Ted Huson? A Yes.

Q Was he working with you on December 17, 1965? A If that's what the paper says, that's what it was, I knew he was my helper when he got hurt, now, I don't know what date it was.

Q All right. Well, now, on December 17, 1965 were you the immediate superior or pusher or bossman for Mr. Huson? A Yes, I was.

Q Now, it came to your attention that he had an accident or he was hurt on December 17, '65? A That's correct.

Q Would you tell us about that please, sir, what happened? A We were working on CC structure better known as Charlie Charlie structure and the field foreman called there and asked the gauger --

Q What's his name, please, the field foreman? (11) A I think it was Eugene Fricke, I'm not sure.

MR. GAINSBURGH:

Is that the field foreman's name?

A Yes, sir.

BY MR. MELANCON:

Q Do you know who he's employed by?

A He's employed by Chevron.

Q All right. Go on, please. A He notified the gauger to tell us to get ready to move to a rig job, we had a job coming up on the rig hustler.

Q Excuse me just a minute, do you know who the gauger was? A It was King or either Pool, I think it was King, I don't know, it might have been Pool, I don't know. Whoever was on duty, I mean, was out, whatever hitch it was, there's one there and King was in charge for seven days and then Pool was, but just before we were ready to leave we had

the tools all racked up and the gauger asked if we'd remove this hose on CC-1, I don't remember whether it was attached to the casing or the flow line, whichever it was, it had been rigged up by an Otis crew which we relieved and he asked (12) us to knock this thing loose, so Huson went down to knock it loose and it was a knock-up union which required a hammer and he had to crawl under a grating about 18 inches high to get to it, so he did that while I was making out my reports, my wireline reports before I left that structure, I have to make out a ticket, a report on the job I was doing there before I moved to another job and he said he'd take care of it so I went on in the gauger's shack or the house, whichever you might want to call it and I'm working on my ticket and he came upstairs and I met him at the stair, he told me that he hurt his back and I asked him how he did it and he said crawling under the grating to knock that hose loose. I don't remember whether it was to knock it loose or make it up, but there was a hose involved that needed either connecting or disconnecting, I don't quite remember. So I asked him, well, does it hurt real bad and he said, well, pretty bad and I said, well, we've got to go on this rig job, if you can't make it I'll see about getting someone else. So he said, I'll give it a try and the (13) gauger called to tell us our helicopter was on the way, they was going to move us by helicopter, so anytime I move with my men I've got a tool box which was about 175 pounds and they have got two handles on it, the helper takes one handle and I take the other. And I said, well, don't try to lift the thing, and he said I'll just give it a try and he eased up on it and said, I'm sorry, I can't do it, and I said, that's all right. So I carried the box myself to the helicopter and we both

boarded the helicopter and arrived on the rig hustler and they weren't ready for us so we were just summing up the situation to see how we should rig up on this well and we were walking around, I don't remember what structure it was we went to, so after when we got up there and looked around I asked him about his back and he said it wasn't no better, he felt like it hurt more so I said, well, there's no use trying to hurt yourself any more, I got on the radio and called for the assistant field foreman who was Eugene Fricke and told him my helper hurt his back. He made out an (14) accident report.

Q What radio was this, please? A The Chevron radio.

Q Was this on the hustler? A Yes. So we went to the S-25, this was the living quarters for us, when they told us to bring the man over there, they sent a helicopter to pick us up and when we came down in the heliport and down in the recreation room is where people sit waiting on the helicopter and I talked to Marshall Babin and he asked me what happened and I told him my helper hurt his back and I said, well, you better send him on back in and he said, no, you'll have to take him in and I said that's all right, but it's not my day to go in, it's Sammy Hawthorne's day to go in. Six and three. Sammy Hawthorne was the other wireline out there and I don't know who his helper was, so we made arrangements for Huson to come in with Sammy Hawthorne on a helicopter and I used Hawthorne's helper to come with me and make this rig job because they couldn't get a man out there in time and we didn't want to tie up the rig, so he (15) came on in with Hawthorne and that's all I know about it.

Q All right. Let's go back a little bit. The tools you mentioned that were necessary to disengage or engage, whichever it was, the line that you are referring to that Mr. Huson was working on at the time he injured himself, who did those tools belong to? A I don't remember whether it -- all it required was a hammer and I don't remember whether it was my hammer, because Otis furnished our personal tools and that's what we carried around in a tool box, but it could have been Chevron's, I don't know which, all it needed was a hammer to knock the union loose.

Q Had you directed Mr. Huson to knock this joint loose or had he chosen to do this by himself? A Well, we were asked to by this Chevron gauger and it's customary for a helper to do something like this without us -- without the operator implying, telling him you got to do this, because we don't work like that.

Q And this would not have been a job you'd have done yourself? A I could have done it, I had my paper work to do, (16) I wouldn't have refused it, but it had been rigged up by an Otis crew before that, but it was all Chevron's equipment.

Q Who's this crew that you speak of that rigged it? A I don't remember, there was three crews working and there was also one operator off and he took a different helper out each time, so I don't remember what crew it was that rigged it up, but we did things like that and didn't say anything about them, always if they asked us to do something we did it, we got along fine, one big happy family.

Q Good. Did you in your capacity as the

boss man for the Otis crew make up a written report of any sort in connection with this injury to Mr. Huson that he sustained?

A No, I didn't, the man who's injured -- I've had several injuries since I've been with Otis and the report doesn't require the operator to make out the injury as far as I know, unless they have changed since I've been off. The man who's injured makes out the report and whoever was on the job with him name is put on that report as a witness. But I didn't go in with the man, Sammy Hawthorne took him (17) in.

Q Have you ever seen any report made by Mr. Huson? A No, I haven't seen it.

Q Have you ever seen or talked by telephone or otherwise with Mr. Huson after this accident occurred? A No. I've seen him in the capacity as a dispatcher, he called me the night before I go on the job, because the man worked in the office there for about a year, I think, before he left and he was gone to Texas or somewhere before I even knew, he was gone three months before I knew he was gone, I saw him very seldom.

Q When was the last time you had seen him or spoken to him? A I'm not sure.

Q Was it within the last month? A No, I haven't seen the man in at least two years.

Q Have you talked with anybody in behalf of the plaintiff in connection with this? A No.

Q Mr. West? A Mr. West was the only one. In fact, I didn't know there was a case until I was subpoenaed by (18) the Federal Marshall. I didn't know there was a case against

Chevron or Otis or anybody.

Q And until you received this subpoena you had not received any inquiries or otherwise from Otis in connection with your coming to give your deposition in this case? A Let's see, when was it, in December our service specialist came to my house and said I was requested to appear here on that very day, no, it wasn't December, it was -- I don't remember exactly what date, but Lawrence Landry, our service specialist came to my house with a note the day before I was going to appear here and I told him it was physically impossible for me to make it at that time, other than that that's all I knew. He just said a deposition for an injury of Ted Huson and that contradicts me here on this, I take that back, that's when I knew about it, that was some time in November.

Q Of last year? A Yes.

Q '68? A Yes. And Landry said I was to appear here. Well, (19) he came the evening before I was supposed to come here the next day and I said it's physically impossible, I'm not able to go, I can't drive by myself yet and I can't get nobody to drive me there and they said in the meantime they had postponed it and that's when I first knew that Ted Huson had a case against Chevron Oil Company, he said he was filing suit and he didn't know any details about it, he just said he wanted me down here for a deposition with regard to the accident Ted Huson had when he was out with me.

Q There's no question in your mind but at the time that Mr. Huson contends or said that he injured himself that he was actually doing work in behalf of Otis Engineering, is that

so? A Would you repeat that?

Q Is there any question in your mind or are you absolutely certain that at the time when Mr. Huson suggests he hurt his back that he was working for Otis Engineering doing a job for them? A Well, yes, he had to be, he was out there as my helper.

(20) Q He was getting paid for that by Otis? A Yes.

Q And he wasn't trespassing on the CC structure without authority? A Definitely not.

Q And you were also getting paid at the same time, you were in the employ of Otis, is that correct, at the same time? A Yes, sir.

Q And when he supposedly hurt his back you were actually filling out some details in paper for Otis? A That's right.

Q And that was part of your job? A That's correct.

Q I see. Do you know if a work order or a service order was signed by you or anyone else in behalf of Otis in connection with this particular job on which Mr. Huson was hurt on December 17, 1965, and this I'm referring to is the little Chevron service order and agreement or whatnot that is usually signed on these type of jobs? A There's a service order, I signed them and the field foreman signs one and I have my name (21) and my helper's name and serial number.

Q And you feel reasonably sure one was completed on this particular job? A Well,

it would have to be, yes, sir.

Q And do you have any idea, sir, whether you will be moving away from the Houma, Louisiana area within the next twelve months?
A I doubt it very seriously.

Q Is that your home? A Yes. Well, I was born here, born in New Orleans and raised in Houma, I've been there all my life other than the time I was transferred to Texas and service time.

Q What education do you have, sir?
A I have high school, high school graduate.

Q Out of where? A Terrebonne High.

Q Have you ever been convicted of any crime? A No, sir, never have.

Q Are you married? A Married, yes, sir.

Q Living with your wife? A Yes, sir.

Q Do you have any children? A I have four.

(22) Q How old are you? A 42, be 43 in May, May 6th.

MR. MELANCON:

At this time we have no further questions of the witness.

BY MR. GAINSBURGH:

Q Mr. Fesi, my name is Sam Gainsburgh and I represent Ted Huson in this matter, I'm his attorney, and I want to ask you a few questions about this matter also, if you

please. A Sure.

Q In speaking with Mr. Melancon just a few minutes ago you indicated that a service order was probably signed on, and I thought you indicated on the particular job that Mr. Huson was doing at the time that he injured his back, now, I want to ask you whether or not this service order you are referring to involved the particular job on the CC structure or the particular detail that Mr. Huson was engaged in at the time he hurt his back?

A No, sir, that didn't refer to any -- just specified what we did on that particular -- you have to (23) make a job ticket for each well you work on and we may work on four or five wells in one day, but each well we work on has a name and a number and therefore we have to make a ticket for each one and it is required to specify what we did on that particular well, but it doesn't require us to put any injury of any sort, just the labor that was done on a particular well. But the well he was injured on knocking that hose loose was not the well we were working on that particular day, I don't remember the number of it, but I do remember that we were not working on that particular well, it had been rigged up by someone else and it was an Otis crew and I don't know who, but like I said, we were asked to get this hose loose, as far as I remember, or make it up, I'm not sure, but I know it involved a well that we hadn't labored on that particular day, we were doing this more or less as a favor, but ordinarily when we are through with a well we rig everything off of it and move away from it, but this well, more work was anticipated on it, that's why it was left rigged up like (24) that with that hose on it where he knocked loose. But all I can say is some orders were changed somewhere that they

decided not to use that, so we were securing a well and that's the way it took place, but that is not on the work order, no, sir.

Q That would not be on the service order that you were referring to? A No, sir, it would not, no, sir.

Q Now, do you remember approximately how many wells you worked on on CC structure that particular day, if you worked on more than one well? A I think it was one, I'm not positive of that, Mr. Gainsburgh, I believe it was just one well because it was just before lunch that we had to move and we started out 6:00 o'clock in the morning and got the boat moving from here and this was when we started out, so I imagine it was one well before that and then we moved to the rig hustler.

Q I see. This particular well that you were asked to either make or break a hose connection on, was it located where the -- in the same level that the other wells were located? A No, sir, it's on a sub structure, it was a (25) discovery well so therefore it was completely out of sight and it was below the well deck where the other wells were, the discovery well is always maybe 20 foot down below there and there's gratings and steps up to it, you see, it's -- well, like one time before they put the big structure, it's a discovery well and it's set out there as a caisson by itself and they set the structure on top of it, it was a discovery well and therefore out of sight and if I'd have been working on it I couldn't have seen him from the wireline unit where you should be or at the lubricator, so I could assist Mr. Huson, so I couldn't have seen him anyway.

Q Why couldn't you have seen him? A It's out of sight.

Q And your wireline would have been up on deck? A Yes, sir, it's way off from it.

Q Do you remember this particular discovery well on Charlie Charlie structure out there, Chevron's structure? A Do I remember it?

Q Yes, sir, this particular discovery well, do you have any recollection of how it was rigged up, (26) and set up, you mentioned a grating in your testimony. A Yes, sir, I worked out there a long time, it's below the big platform and then it has -- you come up from the catwalk around the big platform and there are steps up to it, which is -- I don't know, I don't know, maybe 15 or 20 feet from the structure we swing off of ropes onto that, you walk all around the structure that you go up and there's another little platform, it's all set up by itself, then you go on up maybe 60 more feet and that's where all the other wells are, set above. And it's set off by itself down below, but it has a walk all around it, but they had this sub grating which Mr. Huson had to crawl under, like I said before, I think it's 18 inches off the other grating.

Q Why was it necessary for him to crawl under there? A There's no other way to get to it.

Q Well, this particular area that --
A It's a small area where this particular well's at.

(27) Q The particular part of the well head that he had to work on? A If I remember correctly now, the way this situation was

for him to have to get under that grating, I imagine it was hooked up to the casing valve, and the casing valve is below on a sub structure, you see, your wing valves are up above it and then it's stepped down so it had to be on the casing valve which doesn't give you very much room to get under there to get to it, it's got platforms all around it and it's in a small area, this discovery well, it's in a small area.

Q But is it necessary to do work on the casing valves from time to time in these offshore wells? A Yes, it is. This particular well, one string was gas-lift, you have to equalize it, you either have to fill it up with water or apply gas to both sides, if you have got gas on the outside of your tubing, on the outside of the tubing which would be the casing and you can shift a sleeve or pull a gas-lift valve or something and there wasn't anything inside the tubing, it would blow the tools up the (28) hole, so you have to equalize that, and I think that hose was used to fill that casing up with water.

Q To equalize pressure? A Right.

Q And what I want to ask you specifically, is it necessary from time to time to use these casing valves in keeping these wells, such as the discovery well on Charlie Charlie structure, flowing or properly operative, do you have to from time to time work on these? A Yes, sir, when they sand up or something.

Q That's not particularly unusual, is it? A No, sir, it's not, not in that particular field it's not.

Q So that from time to time it's reasonable to anticipate that it would be necessary for someone to work on these valves, is that so? A That's right.

Q Now, this particular grating that Mr. Huson had to crawl up under, what was it made of, sir, wood, metal? A No, sir, it's steel but it's -- oh, you can see through it, I mean, cracks in it, you know, I can't --

(29) Q Expanded metal, would it be called, or subway grating of some sort? A Subway grating or something like that, similar to a grating on Canal Street or something, it's something like that.

Q On this particular grating were there any access hatches cut into it that a person could lift up and work on the valve beneath it without crawling up under it? A Not as I recall, as far as I remember that was the only way you can get to the casing valve was get under that grating.

Q If it was necessary to use a wrench of any kind to do this work you would have to crawl up underneath this 18 inch high grating and use this wrench? A That's right.

Q In that circumstance? A Yes, sir. I'm not saying now that's the exact height, Mr. Gainsburgh, but it's not very much over that, if it is, and it's close quarters, in fact, I've seen some closer than that.

Q And this grating that the valve and the connection that was to be worked on, this was property of Chevron Oil Company and didn't belong to (30) Otis, did it? A No, sir. If he used a hammer, I don't remember, that's what he took to do the job, just a hammer, a

ball seen or maybe a little sledge, but it could have been out of my tool box or one that Chevron had laying down there, they usually keep wrenches, a twenty-four or thirty-six or fourteen down there because they work on that themselves from time to time.

Q If it was a wrench of 34 or 36 inch wrench, could that have been the property of either Chevron or Otis, do you have wrenches that big in your -- A 18's are the biggest we have, an 18 inch wrench and a 4-pound sledge we carry in the tool box.

Q But if this wrench was any bigger than 18 inches it probably belonged to Chevron and not Otis? A Right, because we couldn't get anything bigger than 18 in the tool box.

Q I believe that you mentioned to Mr. Melancon, Mr. Fesi, that you were Ted Huson's immediate superior, boss on the job, is that so? A Yes.

Q Now, would you tell us whether or not back in (31) December, 1965 at the time involved in this matter Otis had any policy about an operator having to write a letter to the company in connection with any injuries which his helper sustained on a job dealing with the occurrence and making recommendations concerning preventions of accidents? A As far as I recall, Mr. Gainsburgh, the operator didn't have to write the letter unless they have changed it since I've been off, it's whoever was injured was to write a letter concerning how that particular accident could have been avoided, the person it happened to is the one that was supposed to write the letter.

Q That would be in addition to making out the accident report? A Yes, sir. That has been a policy for some time now, I don't know just how many years.

Q Now, from what I understand from your testimony you and Mr. Huson were employed by Otis Engineering Company at this time and I take it that you personally regarded your presence on the CC structure, you were working on the customer's property, is that (32) right? A Definitely, yes, sir.

Q And that Chevron Oil Company was a customer of Otis? A Yes, sir.

Q Is that the way you were viewing the thing? A Yes, sir.

Q And that it was up to you and your men, the men that you were responsible for to keep the customers satisfied and happy, as you said, one happy family? A That's right.

Q I see. And this is customary, is it not, in the oil field, for speciality companies such as Otis to have this sort of attitude with the major oil companies like Chevron and the others? A Yes, sir, that's right, more or less public relations.

Q And there's nothing unusual about your helper doing this kind of work at the request of a Chevron gauger, I take it? A No, sir, not that I recall, I mean, it's not unusual, no, sir.

Q Now, finally, Mr. Fesi, you reside in Terrebonne (33) Parish, do you not? A Yes, sir.

Q And the subpoena you received was to subpoena you to come to appear here in Orleans Parish? A Yes, sir, it was a complete surprise, I wasn't expecting it.

Q Were you aware of the fact that you did not have to appear here in another parish from where you reside? A No, sir, I wasn't aware of it.

Q But you just came voluntarily anyway, did you not, sir? A Yes, sir.

MR. GAINSBURGH:

I have no further questions of the witness at this time.

BY MR. MELANCON:

Q Mr. Fesi, this particular area where you mentioned Mr. Huson was working when he supposedly injured his back, had you ever seen this area before December 17, 1965? A Have I ever seen it before?

Q Yes. A Yes, sir, I've seen it before.

Q On one occasion or more than one? (34) A More than one, I've worked on that particular well more than one time.

Q And it was in the same condition of equipment and so forth as it was on December 17, 1965? A No changes that I could recognize. Another thing I'd like to add, I didn't know that I could have refused. A man can refuse to appear for something like this, I didn't know anything about that.

Q You mean refuse to come for the subpoena,

in other words, you didn't want to come here today? A I didn't say that; I just asked if a man had a choice.

Q Oh. A I was just under the impression that because they -- that did inconvenience me in quite a few ways.

Q How long before December 17, 1965 would you estimate that you worked at that discovery well where Mr. Huson was working on the day that the accident occurred? A I didn't get that now.

Q How long before December 17, 1965 would you estimate that you worked or had been in that area where this discovery well was on the CC (35) structure, where the discovery well was? A Well, I'll put it this way, I worked in that particular field in the Southwest flank of Bay Marchand for three years. Now, how many times I'd been to CC structure or any other structure out there I can't say for sure, because I've worked as high as nine different wells in one day, so I can't minimize it that close.

Q But you're positive that you had worked on this discovery well before December 17, 1965? A Yes, I had at different times.

Q For Otis? A Yes.

Q And is there any way that you could give us the number of times that you might have worked on it? A No, sir, not in my mind. If it had to be found out it could be looked up in the wireline tickets which they keep records of.

Q And service orders, too? A And service

orders and C-166's, which is a Chevron report made up for each well and what day and what was done for such and such a well and they keep their own records and Otis keeps a (36) record too. But if they have them on file now I don't know, they usually keep them for quite a few years anyway.

Q Were you the top man representing Otis on the CC structure on December 17, 1965?

A Yes, sir.

Q And how long before December 17, 1965 would you estimate that you were the top man for Otis on that particular structure?

A Well, any time I went there with a helper I was.

Q Within the six months prior to December 17, 1965? A Yes, sir, if I went over there to do a job I had a helper with me, unless it was some particular job where it was a tedious fishing job, we may have had a supervisor out there at the request of Chevron.

Q You don't recall that? A No, sir, I remember several fishing jobs I was on there where we had a supervisor, I mean, a service specialist.

Q But this was a completed well, this discovery one, wasn't it, sir? A Yes, sir, it was, one side of it was dead, it was sanded up. And the other side, I don't remember whether it was flowing on its own or (37) on gas lift, but I remember CC-1 was the one that sanded up, and CC-1D, that's a dual, that would be the short string in that particular well, I don't know whether that's flowing or not.

Q That's CC-1D? A That's the same tree, it's a dual.

Q And which one of these particular wells would it have been that Mr. Huson was working on on December 17, 1965, would it have been on one or one-D? A We were not working on that particular well, we were working on another well which I don't recall, and we were asked to do this, like I said, before we left.

Q Right now which one was it that you were asked to do or the one that Huson -- A It was a discovery well, I don't remember whether it was the short string or the long string, but if it's a casing it wouldn't matter, because it's for both of them.

Q But you wouldn't remember if it's CC-1 or CC-1D? A No, sir, I don't.

Q And you'd have no way of telling from -- telling that from your records? (38)

A You can look up in the C-166's, Chevron has a record out there on their structures, and I made a report for each well I worked on.

Q Have you seen those reports since December 17, 1965? A No, sir, I haven't had any occasion to see them.

BY MR. GAINSBURGH:

Q About how long did Ted Huson work as your helper? A Well, at the time, Mr. Gainsburgh, we were working six out and three off and, you see, and each time an operator went off on days off and went back on again he had a different helper, so I

don't remember if it was the first day or second day of that particular hitch, as we call them, that he was out when he got hurt, his back, it may have been the first or second day, I don't remember, of his six day hitch.

Q Had he ever worked with you before?

A He worked with me one time before, they called me on my days off to go up in the north end of the field, an operator that needed relieving and I had been off and they asked me if I'd replace him and they said my helper was already out there, all I had to do was get my (39) clothes and catch a helicopter and land on such and such a structure, he'd be waiting for me, and that was Ted Huson.

Q And how many days did you work together during that time? A Two or three days, I'm not sure.

Q During that time, the time previous to the time he told you he hurt his back, did he appear to you to be injured or disabled?

A No, sir, not that I could see, because he was a good worker and worked hard and never did complain.

MR. GAINSBURGH:

Thank you. No further questions at this time.

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(40) STATE OF LOUISIANA

PARISH OF ORLEANS

I, George E. Hayes, an Official Court Reporter in and for the State of Louisiana, Parish of Orleans, authorized by the laws of

said State to administer oaths and to take the depositions of witnesses, pursuant to Section 961.1 of Title 13 of the Louisiana Revised Statutes of 1950 as amended, hereby certify that the foregoing deposition of MR. CARMEL FESI, was taken before me at the time and place hereinabove stated; that said witness was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in answer to the questions propounded to him; his deposition being reported by me in shorthand (Stenograph) and thereafter transcribed on the typewriter under my supervision; that the foregoing thirty-nine pages contain a true and correct transcript of the deposition of said witness as thus given.

I further certify that I am not of counsel or related to any of the parties to this cause, or in the employ of any of them, and that I am in no wise interested in the result of said cause.

Signed this 4th day of February, 1969.

s/George E. Hayes
George E. Hayes,
Official Court Reporter.

...oOo...

AMENDED ANSWER TO THIRD-PARTY COMPLAINT

(Number and Title Omitted)

Now into Court come Otis Engineering Corporation and Highlands Insurance Company, third-party defendants, and amend their answer heretofore filed to the complaint of Chevron Oil Company:

I.

Third-party defendants reiterate and re-aver all and singular the allegations contained in their original answer except with respect to Paragraph 2 of the Second Defense of the Answer to the Third-Party Complaint so that the said paragraph will read as follows:

"2.

"Third-party defendants deny the allegations of Paragraphs 9, 10, 11, 12, and 14 of the third-party complaint."

WHEREFORE, defendants pray that this, their amended answer, be taken as a part of their pleadings, and for all relief prayed for in their original answer.

PHELPS, DUNBAR, MARKS, CLAVERIE & SIMS

By s/Blake West
 Blake West
 1300 Hibernia Building
 New Orleans, La. 70112
 529-1311
 Attorneys for Otis Engineering
 Corporation and Highlands
 Insurance Company

...ooo...

PRE-TRIAL CONFERENCE

Minute Entry March 24, 1969 BOYLE, J.

(Number and Title Omitted)

A pre-trial conference was held this day.

Present: Samuel C. Gainsburgh, Esq.
Jesse R. Adams, Jr., Esq.
Attorneys for Plaintiff

Lloyd C. Melancon, Esq.
Attorney for Defendant
and Third-Party Plaintiff

Blake West, Esq.
Attorney for Third-Party
Defendants

A pre-trial order was submitted, but no trial date was set pending decision on a motion for summary judgment to be filed by defendant, Chevron Oil Company.

A further pre-trial conference was set for May 30, 1969, at 9:00 A.M.

...ooo...

MOTION TO DISMISS AND ALTERNATIVELY FOR
SUMMARY JUDGMENT BY CHEVRON OIL COMPANY

(Number and Title Omitted)

Defendant Chevron Oil Company moves the Court to dismiss the complaint filed against it, on the grounds that it fails to state a claim upon which relief can be granted because plaintiff's disabilities, if any, arise out of an alleged December 17, 1965 accident within the claimed territorial limits of the State of Louisiana and more than 1 year elapsed before the filing of the complaint in the above-entitled and numbered Civil Action and is barred by the provisions of LSA-C.C. art. 3536; and, alternatively, inasmuch as there is no genuine issue as to any material fact, defendant is entitled to judgment as a matter of law to the extent that at all

times pertinent plaintiff was an employee of the independent contractor Otis Engineering Corporation, doing that type of work which was the trade, business and/or occupation of Chevron Oil Company. In support hereof defendant relies upon the pleadings, answers to interrogatories, plaintiff's deposition and the annexed affidavit which are all made part hereof as if and as though copied in extenso.

s/Lloyd C. Melancon
MESSRS. McLOUGHLIN, BARRANGER,
WEST, PROVOSTY AND MELANCON
Counsel for Chevron Oil Company

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AFFIDAVIT IN BEHALF OF CHEVRON OIL COMPANY

(Number and Title Omitted)

UNITED STATES OF AMERICA
STATE OF LOUISIANA
PARISH OF ORLEANS

I am George E. Jones and have personal knowledge of the facts herein set forth; and, this affidavit is submitted in support of a Motion to Dismiss and/or for Summary Judgment in behalf of Chevron Oil Company.

I am Staff Survey Engineer of The California Company Division of Chevron Oil Company. On December 17, 1965, Chevron Oil Company's fixed and immobile CC-Structure in the Bay Marchand Field was located at a point having Lambert Coordinates X = 2,375,420.45 and Y = 125,673.90, and at Latitude 29°00'25.05" and Longitude 90°09'32.35". This location is within the disputed tidelands area as defined in the agreement dated October 12, 1956 between the United States

and the State of Louisiana.

s/George E. Jones
George E. Jones

Sworn to and subscribed before me this
14th day of April, 1969.

s/Lloyd Cyril Melancon
NOTARY

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STATEMENT OF THE MATERIAL FACTS AS TO WHICH
MOVER CONTENDS THERE IS NO ISSUE TO BE TRIED

(Number and Title Omitted)

Comes now Chevron Oil Company, who in support of its Motions to Dismiss and/or for Summary Judgment, contends there is no genuine issue to be tried as to the following material facts:

- 1- At all times pertinent to the allegations of the Complaint filed by Mr. Gaines Ted Huson in the above-entitled and numbered Civil Action, plaintiff worked in the course and scope of his employment by and under the control, direction and supervision of the independent contractor, Otis Engineering Corporation;
- 2- At all times pertinent to the allegations of the Complaint filed by Mr. Gaines Ted Huson in the above-entitled and numbered Civil Action, plaintiff was doing that type of labor and work which, but for the agreements between Chevron Oil Company and Otis Engineering Corporation, was part of the business, occupation and/or trade of Chevron Oil Company; and,

- 3- The damages and/or disabilities if any, alleged by Mr. Gaines Ted Huson in his Complaint filed in the above-entitled and numbered Civil Action, arose out of and resulted from his December 17, 1965 accident, and more than 1 year has elapsed between that date and the filing of his Complaint against Chevron Oil Company.

New Orleans, Louisiana, April 14, 1969.

s/Lloyd C. Melancon
MESSRS. McLOUGHLIN, BARRANGER
WEST, PROVOSTY AND MELANCON
Counsel for Chevron Oil Company

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STATEMENT OF REASONS IN SUPPORT OF
MOTION TO DISMISS AND ALTERNATIVELY
FOR SUMMARY JUDGMENT BY DEFENDANT

(Number and Title Omitted)

MAY IT PLEASE THE COURT:

Plaintiff claims damages resulting from a December 17, 1965 accident occurring in his employment by Otis Engineering Corporation (hereinafter called Otis), an independent contractor, while on the fixed and immobile CC-Structure of Chevron Oil Company (hereinafter called Chevoil). (See Complaint, Articles 4, 5 and 6).

Since the filing of the complaint and responses thereto, plaintiff's deposition was recorded, and interrogatories and answers filed in the record, all revealing the true facts pertinent to the alleged accident.

Accordingly, it is the contention of defendant that plaintiff's claims are barred because at all times pertinent he was an employee of an independent contractor, who allegedly sustained damages and personal injuries in the course and scope of his employment, while under the control, direction and supervision of his employer.¹

Moreover, it is undisputed that at the time of the alleged accident, plaintiff was simply disconnecting a flow-line pipe on Chevoil's already completed oil and gas well, under the direction of the Otis pusher, when he injured himself. Defect or failure of equipment is not involved. In any event, the work assigned to and performed by plaintiff was part of the trade, business and/or occupation of Chevoil, and limits his claims to the applicable workmen's compensation statutes, the exclusive remedy, and a tort action cannot be maintained against defendant.² Also, more

1/ Peter versus Public Construction, Inc., 368 F.2d 111 (1966); Sword, et als. versus Gulf Oil Corp., 251 F.2d 829 (1958); and Hurst, et als. versus Gulf Oil Corp., 251 F. 2d 836 (1958). See also: United States versus Page, 350 F. 2d 28 (1965); Corban versus Skelly Oil Co., 256 F.2d 77S (1952); and, Cagle versus McQueen, 200 F.2d 186 (1952).

2/ LSA-R.S. 23:1032 and 1061. Kent, et al. versus Shell Oil Company, et al., 286 F.2d 746 (1961); O'Brien versus Columbia Carbon Co., 109 So.2d 285 (1959); Bruce versus Travelers Ins. Co., 226 F.2d 781 (1959); Leslie versus Cities Service

(Continued on next page)

than 1 year has elapsed between December 17, 1965, the alleged accident date and January 9, 1968 when the complaint was filed, and as a matter of law is now barred by prescription of LSA-C.C. art. 3536.

In the Seabury case³ defendant was engaged in drilling and operating wells for the production and sale of gas and oil. In its drilling operation it was necessary to move pipe and other equipment from one well to another. One Tom Jarrell was employed to move certain pipe and he in turn employed the plaintiff in that work. Plaintiff was injured and brought suit against the principal for workmen's compensation. The Court held that the erection of oil wells was part of the business, trade or occupation of the defendant and since the employee of the contractor was engaged in hauling pipe a necessary part of the erection

Refining Corp., 252 F.2d 902 (1958); Richard versus National Surety Corporation, 99 So.2d 831 (1958); Maryland Casualty Co. versus Gulf Refining Co., 95 So.2d 734 (1957); Stansbury versus Magnolia Petroleum Co., 91 So.2d 917 (1957); Fontenot versus Stanford Oil & Gas Co., 243 F.2d 574 (1956); Burris versus J. R. McDermott & Co., 116 F.Supp. 907 (1953); Coal Operators Gas Co. versus Fidelity & Casualty Co., 66 So.2d 852 (1953); and, Thibodaux versus Sun Oil Co., 59 So.2d 854 (1950). Also, see discussion in Hebert versus Blankenship, 187 So.2d 798 (1966).

3/ Seabury versus Arkansas Natural Gas Corporation 130 So.1 (1930)

of oil wells, the principal was liable to him for workmen's compensation.

The above cases also illustrate the fact that it is necessary only that the particular operation be a part of the business, trade or occupation of the principal. When such facts prevail the principal is not a third party to the employee of the contractor, and the employee has no right of action against the principal in tort. They illustrate, further, the fact that it is immaterial just what sort of work is being done at the time; that is, whether it is construction, remodeling, repairing or any other type of work, just as long as they are part of the business, trade or occupation of the principal.

In Turner⁴ plaintiff was an employee of an independent contractor engaged in salvaging casing from an abandoned oil well under contract with the defendant. He brought the action for workmen's compensation against the principal for injuries sustained while so employed. The Court held that the defendant was liable because the work in which plaintiff was engaged at the time of the accident was part of the business, trade or occupation of the principal. Incidentally, it was shown that none of the oil companies in Northwest Louisiana pull their own casing.

The case of Coal Operators Gas Company⁵ revealed that plaintiff as the workmen's

4/ Turner versus Oliphant Oil Corporation
200 So.513 (1941)

5/ Coal Operators Gas Company versus Fidelity and Casualty Company, supra.

compensation insurer of Charles O. Maddox, a sub-contractor, sought indemnity from the defendants, Wheless Drilling Company, the principal contractor and its insurer, Fidelity and Gas Company for compensation paid to H. N. Ferguson, an employee of the sub-contractor who was seriously injured while in the course and scope of his employment. Wheless Drilling Company, in drilling and exploring for oil contracted with Maddox to install casing in an oil well being drilled by it and it was on this job that Ferguson's injury was sustained, through the negligence of the employee of the principal contractor. The defendant filed exceptions of no right and no cause of action which were maintained by the trial court dismissing the suit on the ground that, inasmuch as a third party relationship did not exist, indemnity was unavailable.

The Supreme Court of Louisiana through Associate Justice Moise found that the Wheless Drilling Company was not a third person within the meaning of Section Seven of the Workmen's Compensation Act which authorizes suit by an injured employee and his employer against third persons negligently injuring the employee. The case is interesting in that it discusses the Louisiana jurisprudence in connection with Section Six and Section Seven of the Act and in addition cites and reviews numerous common law cases concluding that the position taken by defendants was supported by the weight of authority and precedent.

In connection with one common law case, Justice Moise therein stated as follows:

"Another case involving the same type of situation is Phoenix Indemnity Co. vs. Barton Torpedo Co.,

137 Kan. 92, 19 F.2d, 739, 744.
There the Court said:

'This brings us to the all important question in this case as to whether a party liable under the Workmen's Compensation law can be made liable as a third party in a tort action for the same injury . . .

'This action.....was commenced under the provisions of R. S. 1931, Supp. 44-504, authorizing the bringing of actions for damages by the injured party or his employer against third parties, 'other than the employer,' prescribing the right to do so as between the employee and the employer within a certain period, and it has been definitely held that this section was intended for the benefit and guidance of the employer and employee and was not designed to relieve or affect a third party who negligently injured an employee. . .

'Appellee cites.....in support of it theory that the Shell Petroleum Corporation was a third party for the reason that it was not a party to the compensation case and award, urging that it cannot possibly be liable in or under the workmen's compensation case, because that case is now closed and no liability has attached, and that at most it was only a guarantor in the case Schwartz and his insurance carrier were financially unable to respond and pay the compensation award. If that were the correct test as to whether or not the principal

contractor was a third party, it would in effect place the matter at the option of the workman and the subcontractor whether the principal contractor would be liable under the compensation law or in action in tort. No such options exist under the compensation law and the fact that the principal contractor from the list of those that are liable thereunder, nor render it possible for the principal contractor to be a third party.

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'Notwithstanding the designation in the contract of the Shell Petroleum Corporation as the owner, the substance and contents of the entire contract attached to the plea in abatement and the allegations of the petition which must at this time be taken as true, show that corporation to be the principal contractor and liable under the compensation law, but not liable in an action in tort for the negligence causing the injury for which the compensation award has been made against the sub-contractor and his insurance carrier.'

"See also, Lessley vs. Kansas Power and Light Co., 171, Kan. 197, 231 P.2d 239, 248.

"It is our conclusion that the exclusive remedy to Ferguson,

the injured employee, against either Maddox or Wheless was under the allembacing terms of the Louisiana Workmen's Compensation Act; that Maddox and plaintiff insurer were primarily liable to plaintiff for Workmen's Compensation and medical expenses, and Wheless was only secondarily liable; that if Wheless had been forced to pay Ferguson compensation and medical expenses, Wheless would have had the right to obtain reimbursement therefor from Maddox, but, certainly, Maddox has no such right against Wheless, Plaintiff's rights as workmen's compensation insurer of the immediate employer are derived from and are no greater than those of Maddox and Ferguson, and, since there could not be a recovery in tort against Wheless and his insurer, neither could plaintiff recover judgment against these defendants. Wheless is not a third person within the meaning of Section 7 of the Workmen's Compensation Act, and, being secondarily liable to Ferguson for compensation, with Maddox primarily responsible, Maddox's compensation insurer does not possess the right of indemnification from Wheless and his insurer."

Similarly, in Burris⁶ the principal

6/ Burris versus J. R. McDermott and Co., supra.

contractor was held to be liable under the Louisiana Workmen's Compensation Act along with the sub-contractor for the death of the sub-contractor's employee as the result of an action in the course of employment and therefore the employee's widow was not entitled to maintain a tort action against the principal contractor for the wrongful death of the employee.

In Benoit⁷ the plaintiff was a supervisor-employee of a welding company engaged to do welding for the drilling company. It was held that the exclusive remedy of the injured employee of the contractor against the principal was under workmen's compensation, and that he had no remedy in tort against the principal because the principal was not a "third person" under the provisions of the Act permitting suit by the employee against a third person causing the injury.

Moreover, in Richard⁸ the plaintiff's husband was an employee of a company which had contracted with the City of Lafayette, Louisiana, to contract major power-line improvements. He was involved in an accident in which he was electrocuted. The widow brought suit against the City in damages because of the alleged negligence of the City. Exceptions of no right or cause of action were filed, and maintained by the Court,

7/ Benoit versus Hunt Tool Co., 530 So.2d 137 (1951)

8/ Richard versus National Surety Corporation, supra.

which held that the exclusive remedy available to the plaintiff was under the Louisiana Workmen's Compensation Act, inasmuch as the work being done by the contractor and its employee was a part of the trade, business or occupation of the principal.

The platform involved in this litigation is situated in an area of the Gulf of Mexico under claim by the State of Louisiana. The Supreme Court in United States versus State of Louisiana, No. 9, Orig. -October Term 1968, very recently in 37 U.S. Law Week 4139, 4158 (March 3, 1969), announced its intention to appoint a Special Master to make a preliminary determination of the precise boundaries of the submerged lands owned by Louisiana in the Gulf of Mexico. Whether the platform is in federal or state waters will depend upon the Special Master's preliminary determination and upon the action taken by the Supreme Court with respect to the Master's determination after it is submitted by the Master to the Court.

CONCLUSION

From the foregoing, as a matter of law Chevoil is entitled to judgment, for there is no genuine issue as to any material fact. Accordingly, the Court is urged to dismiss the complaint of plaintiff asserted against this defendant.

Respectfully submitted,

s/Lloyd C. Melancon
MESSRS. McLOUGHLIN, BARRANGER,
WEST, PROVOSTY AND MELANCON
Counsel for Chevron Oil Company

...ooo...

(1)

DEPOSITION OF GEORGE E. JONES
TAKEN MAY 12, 1969

(Number and Title Omitted)

Deposition of George E. Jones, taken in the offices of Kierr & Gainsburgh, 1718 National Bank of Commerce Building, New Orleans, Louisiana, on May 12, 1969, before Geo. S. Thomas, Notary Public and Court Reporter.

P R E S E N T

For the Plaintiff,

Kierr & Gainsburgh
1718 National Bank of Commerce
Building
New Orleans, Louisiana 70112
By Samuel C. Gainsburgh

For the Defendant,

McLoughlin, Barranger, West,
Provosty & Melancon
720 Hibernia Bank Building
New Orleans, Louisiana 70112
By Lloyd C. Melancon

Phelps, Dunbar, Marks,
Claverie & Sims
1300 Hibernia Bank Building
New Orleans, Louisiana 70112

Geo. S. Thomas, Notary Public and
Court Reporter

(2)

S T I P U L A T I O N

The testimony of George E. Jones is taken pursuant to notice. The formalities of signing, sealing, certification and filing are waived, and all objections except those as to the form of questions and responsiveness of answers are reserved to the parties to be urged at such time as this deposition, or any part of it, may be sought to be used in evidence.

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GEORGE E. JONES, 4969 Metropolitan Drive, New Orleans, Louisiana, after being sworn as a witness in this cause, testified as follows:

EXAMINATION BY MR. GAINSBURGH:

Q What is your full name, please, sir?

A George E. Jones.

MR. MELANCON:

I would be willing to state for the record that I spoke to Mr. West and he said his interest was periphery and we should proceed with the deposition.

MR. GAINSBURGH:

Q Where do you live, Mr. Jones? A 4969 Metropolitan Drive, New Orleans.

Q What is your profession or occupation, sir? A I am a civil engineer.

(3) Q By whom, if anyone, are you employed, sir? A Chevron Oil Co.

Q How long have you been with Chevron Oil Co.? A Twenty-one years.

Q Are you generally familiar with the off-shore oil explorations of Chevron Oil Co. and the public activities of the other companies that have operated in the Gulf of Mexico area?

A The portions having to do with surveys and locations I am, yes, sir.

Q I didn't mean the inner workings of any other company, I just meant the public activities. A Yes, generally.

Q Mr. Jones, I am going to show you a copy of an affidavit that was served upon me as attorney for the plaintiff in this case by the attorney for Chevron Oil Co., in connection with Chevron Oil Co.'s motion to dismiss this action and alternatively for summary judgment. The affidavit is dated April 1969. I want to ask you whether you executed that affidavit, and whether or not you are the same person who executed this particular affidavit? A Yes, I am.

Q Now, this affidavit you have given us the geographical (4) location of a fixed and immovable object that you refer to as CC Structure. What exactly is CC Structure, Mr. Jones? A It is a drilling platform located in the Bay Marchand field.

Q The Bay Marchand field is a designated area of the Gulf of Mexico, sir? A The gulf of Mexico, yes.

Q The CC Structure you saw is a drilling platform? A Yes.

Q I take it it is one of these artificial islands that is imbedded upon pilings

resting on the bottom of the Gulf in that particular area? A Yes.

Q Is it completely surrounded by water, Mr. Jones? A Yes, sir.

Q --And not connected to land in any way except at the bottom where it goes into the ground beneath the waters of the Gulf of Mexico in the Bay Marchand area? A That's correct.

Q That platform, I take it, is subject to wind and wave action where it is located, sir? A Yes.

Q And it is subject to the tides that exist in this (5) particular area? A Yes.

Q In your affidavit, Mr. Jones, you say that this particular platform, I will call it for lack of better words to use only one word to describe it, sir, this particular platform is located at a point having Lambert coordinates X and Y, is it? A Yes.

Q What are the numbers?

A $X = 2,375,420.45$.

Q --What, sir? A Feet, and $Y = 125,673.90$ feet.

Q --From where, or what? A It is the origin of the Louisiana coordinate system, south zone.

Q I see. Right now we are going to get in an area that I don't understand, so when we get these coordinates located, will these give us the location in the Gulf of Mexico of this particular Chevron Oil Co. CC Structure or platform? A Yes, it will.

Q Now, Mr. Melancon has been kind enough to exhibit to us today a Coast & Geodetic Survey Map No. 1273, and I want to ask you whether or not this map depicts the area that is described in your affidavit (6) as containing this particular structure, CC Structure, in the Bay Marchand area of the Gulf of Mexico?

MR. MELANCON:

The map speaks for itself. I am sure you will note that the map has a year date that should be brought in here.

A The last revision was in 1968.

MR. GAINSBURGH:

Q December 30, is it not, sir? A Yes, sir.

Q And as revised December 30, 1968, does the United States Coast & Geodetic Survey Map No. 1273 which is on this table purport to depict the area of the Gulf of Mexico in which Chevron Oil Co. CC Structure in the Bay Marchand area in the Gulf of Mexico is located, sir? A Yes, it does.

Q Would you be good enough, if you please, sir, with this red felt pencil to draw a little square which would indicate -- and I realize the platform is going to be a lot smaller on the map than the square you draw, sir -- a square which would indicate the location of that particular artificial island in the Gulf of Mexico? A All right.

(7) Q Above it would you write, "CC," and the word "Structure," please, Mr. Jones?

Let me ask you whether this map that has been referred to shows the area of the Gulf of Mexico known as West Delta Area?

A There is no indication on the map that says "West Delta Area."

Q Are you familiar with the location that is designated as the West Delta Area?

A For offshore Louisiana, the West Delta Area is generally the eastern portion of Chart 1273.

Q Does it show the so-called West Delta Area entirely, or just a part of it?

A It doesn't say. I doubt if it does show it, because there is no block system on here to indicate whether it shows a part or all of it.

Q As a civil engineer, could you tell us by looking at Coast & Geodetic Survey Map No. 1116A as revised to July 29, 1968? A This map does not show all of the West Delta Area. Chart 1273 does not show all of the West Delta Area.

Q But that area, I take it, is shown in Map No. 1116A? A Yes.

Q Is the Bay Marchand area also shown in Map 1116A? A Yes.

(8) Q Would you, as near as you can please, sir, make a little square for us on Map 1116A locating the Chevron Oil Co. CC Structure? Since there is so much red on this particular chart, why don't you go ahead and color it in. That thing you designated there is Chevron Oil Co. CC Structure?

A That's correct.

Q Now, looking at the same map, which is 1116A, just show me with your finger which is the West Delta Area. A The West Delta Area is located to the east of the structure I have just designated on the map.

Q And where is Block 73 of the West Delta Area? Don't mark it yet, sir.

Could you draw a circle around Block 73 of the West Delta Area, or maybe if you can inclose it all? Is there any way for you to inclose it all? A With a rectangle, yes, as designated on this map.

Q Fine. That is Block 73 of the West Delta Area, is it not, sir? A Yes, it is.

Q Are you familiar with Humble Oil & Refining Co. D. Platform? A No, I am not.

MR. MELANCON:

At this point of time we object to the relevancy (9) and materiality of the line of questioning that is now being pursued by plaintiff, in that the allegations of the plaintiff as to his accident involves the CC Structure, and the motion for summary judgment directed by Chevron Oil Co. directs itself to the location of the CC Structure, and while we have no objection to pursuing this if it would be shown that there is some materiality to it, we ask the plaintiff to show us now before we go into this area of the block that we have been talking about, Block 73.

MR. GAINSBURGH:

Your objection is noted.

Q Is Block 73 or its equivalent shown in that first map we were looking at, Mr. Jones, No. 1273?

MR. MELANCON:

I again instruct the witness not to proceed with any further answers in this area, because again we repeat there has been no showing that Block 73 is material or pertinent to the allegations of plaintiff's complaint, and this witness is here and will fully, as best he can, answer any inquiry counsel may have regarding the CC Structure.

At this time I believe we have gone far afield from that, and we will not proceed in having this (10) witness answer any further questions on Block 73 until it can be shown or explained what counsel is seeking in this.

MR. GAINSBURGH:

Well, I don't know that counsel ought to limit the scope of the deposition.

MR. MELANCON:

Humble is not a party to this.

MR. GAINSBURGH:

I realize that.

MR. MELANCON:

As I say, if it can be shown there is some reasonableness involved in this we will go forward with it, but under the circumstances I see nothing in this law suit up until now that involves this area that we are now discussing, and for that reason I ask

the witness not to answer any further questions on that subject.

MR. GAINSBURGH:

I don't know that your objection is entirely unjustified, counsel, but let me say to you that we propose to show in connection with this law suit that this platform is --

MR. MELANCON:

CC Structure?

(11) MR. GAINSBURGH:

--CC platform is an artificial island in the Gulf of Mexico located on navigable waters of the United States, either inland waters or waters covered by the Outer Continental Shelf Lands Act and that the provisions of the Longshoremen & Harborworkers' Compensation Act apply to this structure by their very terms.

As a matter of fact, in opposition to your motion for this relief, I intend to file an affidavit of a witness who is familiar with both structures to make a prima facie showing of their similarity and of the similar nature of these two structures.

This witness has testified in his affidavit that something is located in a disputed Tidelands area, and I think we should like to go into the question with this witness on just what areas are disputed, which are the disputed areas and what is located in the disputed areas, what the dispute is about that is alleged in the affidavit.

MR. MELANCON:

I think it is valid, just so that the witness understands what we are discussing.

MR. GAINSBURGH:

(12) Q I thought I had made it plain to you, Mr. Jones, that actually all I wanted to establish was the fact of the location on this particular map of Block 73 of the West Delta Area, and I will ask you to assume, without accepting it as a fact, just assume for purposes of these questions that within this block there is a structure known as the D Platform owned by the Humble Oil & Refining Co.

If there is such a platform, and if it is located in the West Delta Area in Block 73, it would be within that inclosed rectangle you have made; is that so? A Yes.

Q Now, in your affidavit you have stated, and let's see if I can quote it, referring to the location of the CC Structure you have stated that this location is within the disputed Tidelands area as defined in the agreement dated October 12, 1956, between the United States and the State of Louisiana.

First of all, just let me ask you whether or not you have a copy of that agreement with you? A No, I don't.

Q How about giving us briefly your interpretation of the agreement you are referring to? A The lands seaward of the Zone 1-2 boundary.

(13) Q Can you locate Zone 1 and Zone 2 boundaries for us on this map? A Not on

this map.

Q Can you locate it on the map you brought with you, No. 1273? A Not with what information I have here, no.

Q All right, sir. A It is also located landward of the Zone 3-Zone 4 boundary as originally designated in the interim agreement of 1956.

Q What did this agreement generally pertain to, sir? A As to ownership of water bottom.

MR. MELANCON:

My appreciation is that this whole subject is discussed in the opinion by the United States Supreme Court, and as I recall and I believe Mr. Jones will bear me out, that an actual copy of the map is attached to that opinion showing the different zones.

Q Is that correct, Mr. Jones? A It is Exhibit A attached.

MR. MELANCON:

It speaks for itself, so any interpretation of this agreement will be calling for an interpretation of a question of law. I don't think it is fair for (14) this witness-- in fact, if you have a copy of the opinion here perhaps the attachment to that opinion are reported and we can make a photocopy from that and the witness can work from there.

MR. GAINSBURGH:

What case is this?

MR. MELANCON:

United States vs. Texas, Louisiana, and Mississippi, wasn't it? A I don't know.

MR. MELANCON:

Do you have a copy of my memorandum? I don't know whether I attached that or not. I referred to the most recent, which is a March decision of the Supreme Court and I believe in that it has it.

MR. GAINSBURGH:

Q Did the agreement pertain to ownership of water bottom? A The ownership of water bottom and the method of handling certain oil operations in certain portions of the Gulf of Mexico.

Q You have stated in your affidavit that the location of CC Structure is within a disputed Tidelands area. I take it that this CC Structure is located in an area that is discussed in this agreement between the United States and the State of Louisiana? (15) A Yes, it is.

Q Can you tell us whether or not West Delta Block 73 is located in the area that is the subject of this agreement? A Yes, it is.

Q What is the Outer Continental Shelf, Mr. Jones? A It is an area around continents out to a depth generally of about 600 feet, water depth.

Q Where does it start? A It starts at the coast and goes seaward.

Q On this particular map, 1116A, can you show us where the Outer Continental Shelf begins, its landward beginning? A I don't know exactly what the term "Outer Continental Shelf" defines, but the continental shelf generally begins on the shore line, and in this case the Gulf of Mexico, with the land portion shown in yellow and the water area in blue, and it extends southward from that point.

Q Are you familiar with the term "Outer Continental Shelf"? A I am not particularly familiar with the "Outer" portion of the Continental Shelf, if that is what that means.

Q Would the water between CC Structure and the yellow land nearest to it, would this be Tidewater, water (16) subject to tides?

A It is subject to the tide. By definition of what I usually consider tidal water, it would not be considered as tidal water.

Q What is your definition of tidal water, Mr. Jones? A Tidal water is normally water inshore, or the seashore that are affected by tides. Of course the tide affects all seas, actually.

Q What would be the approximate distance from the nearest yellow land shown on Map 1116A and CC Structure that you have, just approximately? A Measuring -- this particular map does not have a scale on it that I can find, 1116A does not have a scale noted on it.

MR. MELANCON:

If there is no scale, I object to the witness' giving any observations about what distances may be.

MR. GAINSBURGH:

Let's get on to the 1273 and you can tell us.

MR. MELANCON:

Let the record show the witness is now measuring.

A Shore line to structure on Chart 1273, it is approximately 5.5 nautical miles as shown by the scale on this map.

MR. GAINSBURGH:

(17) Q Would that be more or less than geographical miles? A A nautical mile is approximately a geographic mile.

Q Would it be somewhat smaller, or larger?

A Within .01 foot, or .1 foot. For all general purposes they are the same.

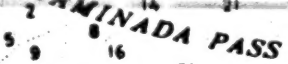
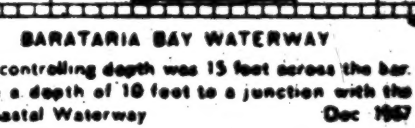
Q About five miles, then, from the nearest land? A Slightly over five miles.

Q Does your Map No. 1273 show Block 73 of the West Delta area, the area where Block 73 is located on the other map? A Block 73 is not designated specifically on Chart 1273. Chart 1273 does cover the general area in which West Delta Block 73 is located.

Q Could you place Block 73 on your chart?

A I can attempt to scale it. It will be very rough, because I am having to translate from a smaller scale to a larger scale.

Q There appears to be a scale on Map 1116A, does there not, sir? A There is, but it is such an odd ratio scale that no standard



scale will match it. It is not a graphic scale so that you can readily determine one from the other.

Q Would you interpolate, if we may use that word, Block 73 in the West Delta Area on Chart 1116A, onto (18) Chart 1273? A Yes.

Q Outline that rectangle in red, if you will, please, and put a 73 in the middle of it.

That is your interpolation of the West Delta Block 73 from Map 1116A onto Map 1273?
A That's right.

Q If there is a D Platform in that particular area, it would be located within this rectangle? A If I have applied it correctly from the scale.

Q If there is such a thing as a Humble Oil Co. D Platform in Block 73 West Delta Area, it would be in this rectangle? A It should be, yes, sir.

Q I don't believe we have any other questions to ask Mr. Jones.

I ask the Reporter to attach both of these maps, both No. 1273 and No. 1116A, to the original of the deposition, and we ask that the original of the deposition be filed in the court records.

- - - - -

C E R T I F I C A T E

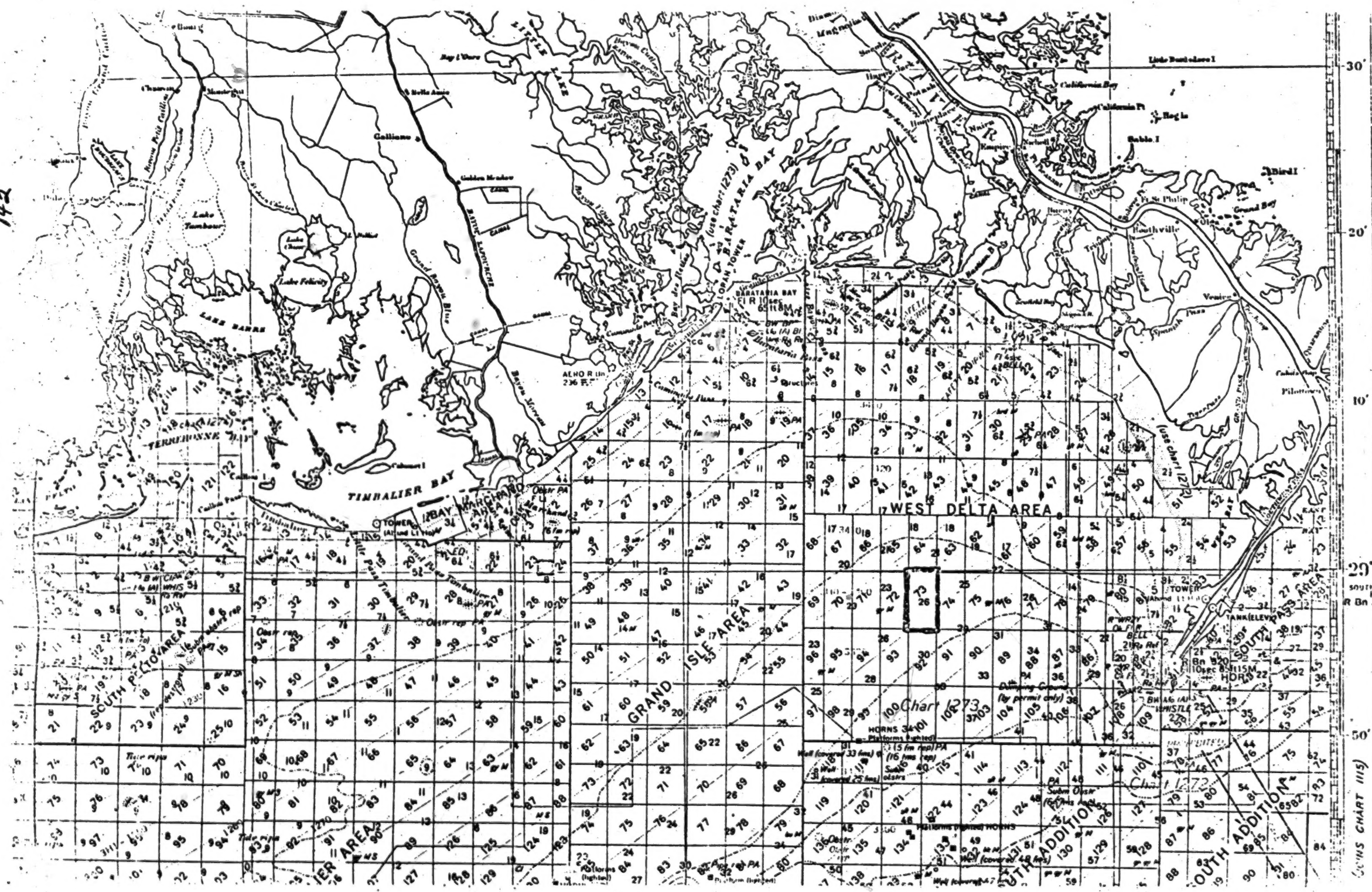
I, Geo. S. Thomas, Notary Public in and for the Parish of Orleans, State of Louisiana, and Court Reporter, do hereby certify that the above named witness:

George E. Jones

after being first duly sworn by me to testify to the truth, the whole truth and nothing but the truth, did testify as set forth in the foregoing transcript of testimony; that the said testimony was taken down by me in shorthand and transcribed under my direction and supervision all to the best of my ability and understanding; that I am not related to parties or counsel hereto, and in no wise financially interested in the event of this suit.

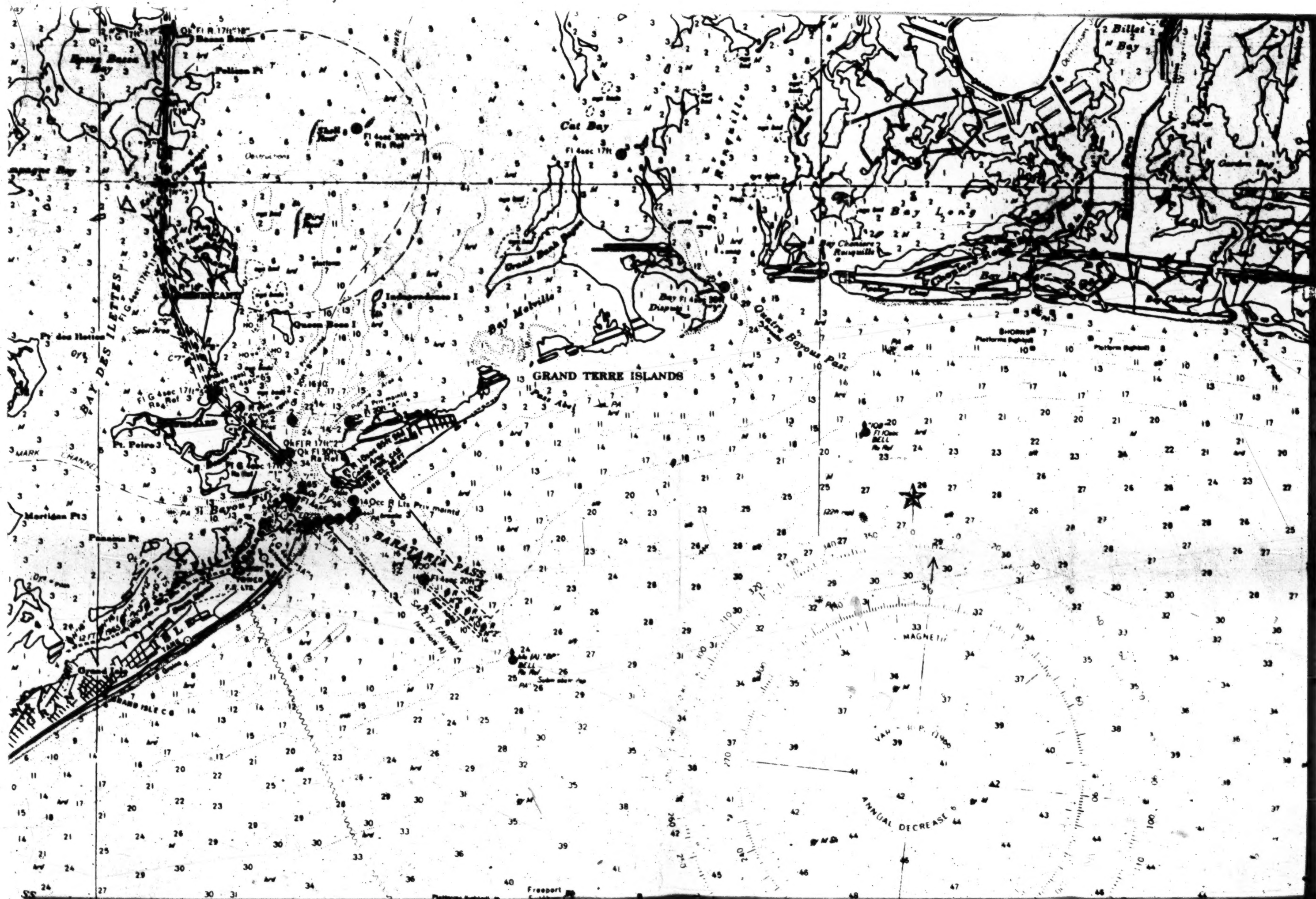
s/Geo. S. Thomas
Geo S. Thomas, Notary Public
and Court Reporter
Parish of Orleans
State of Louisiana

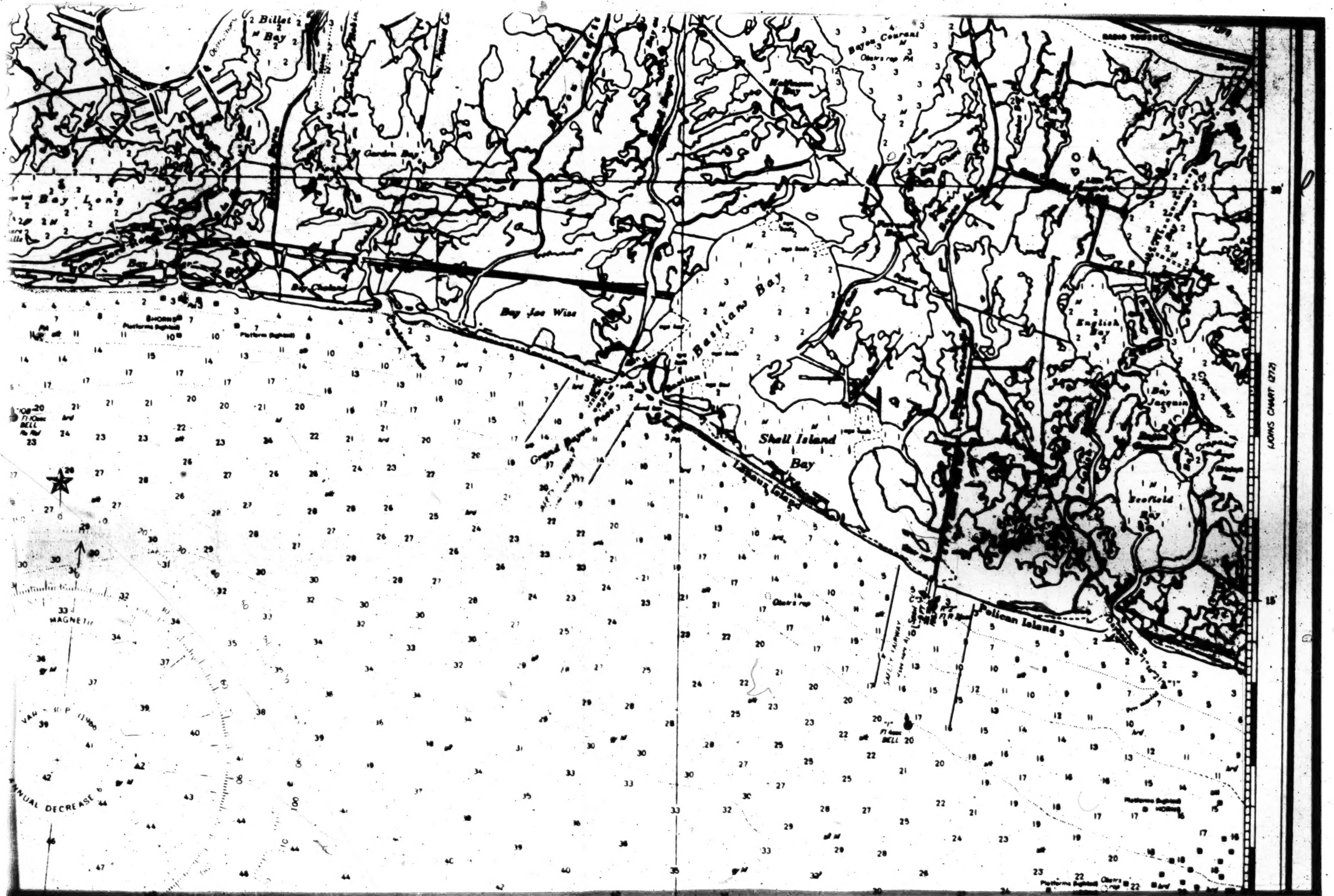
142

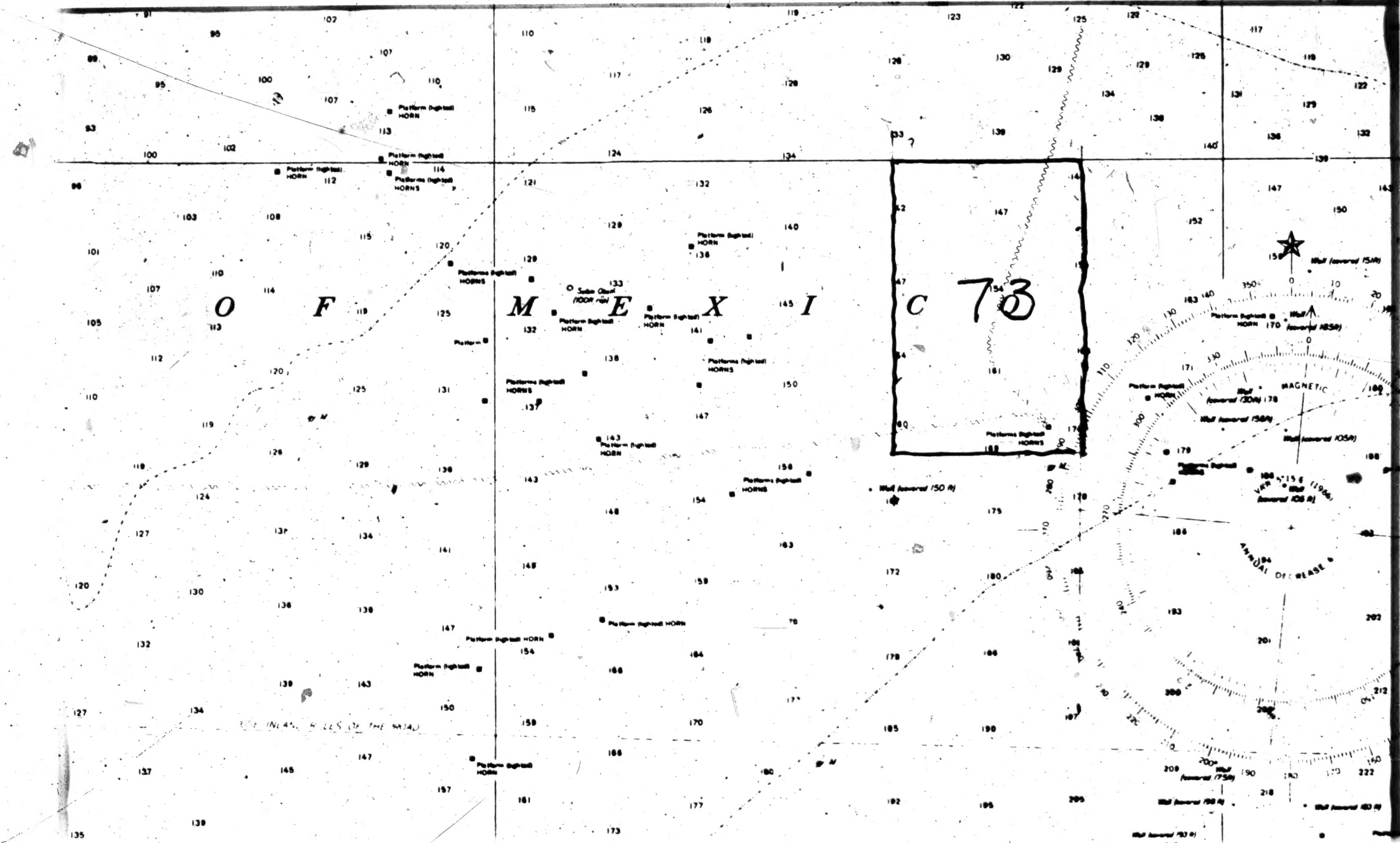


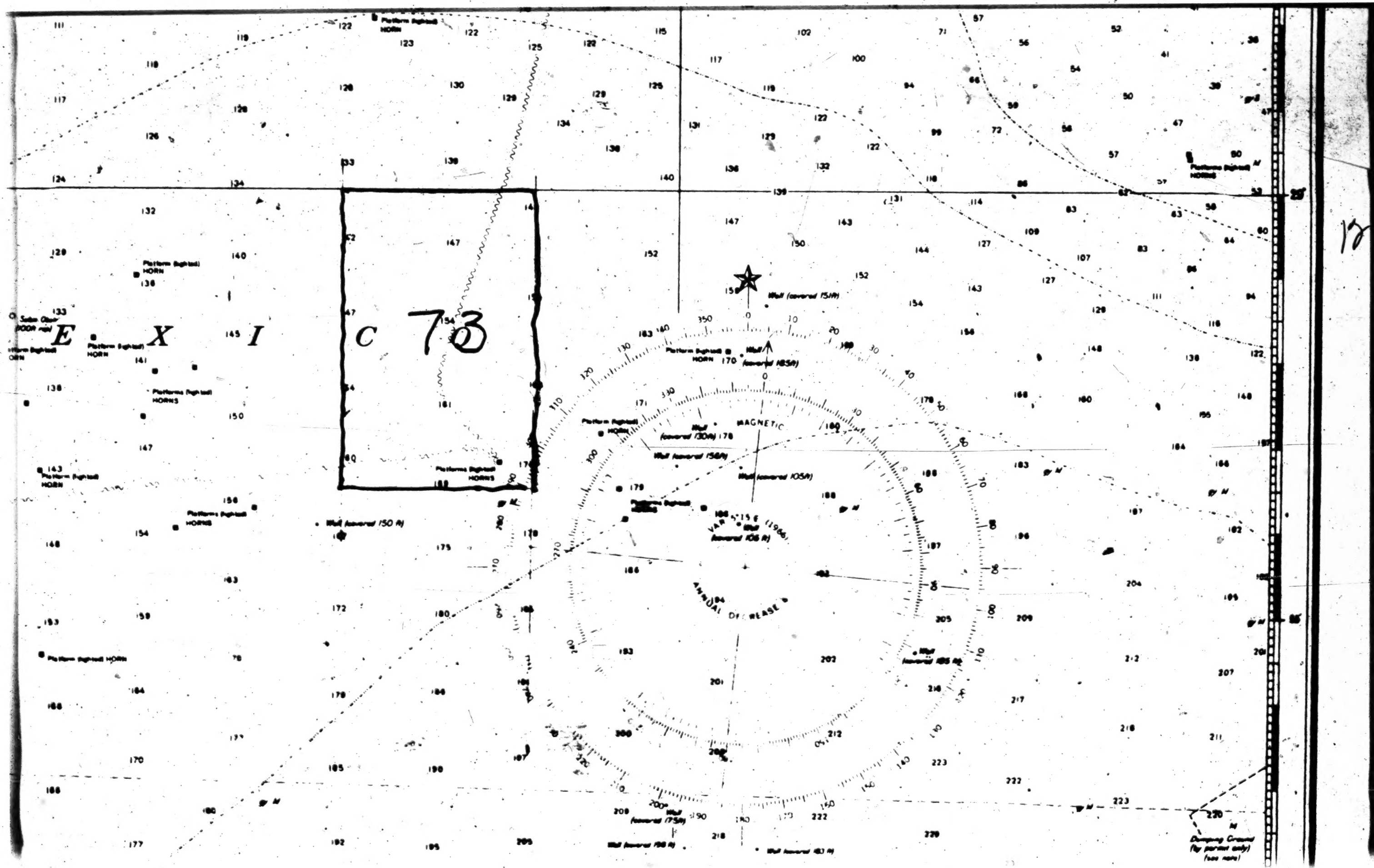
30'
20'
10'
29'
50'

COAST CHART 1115





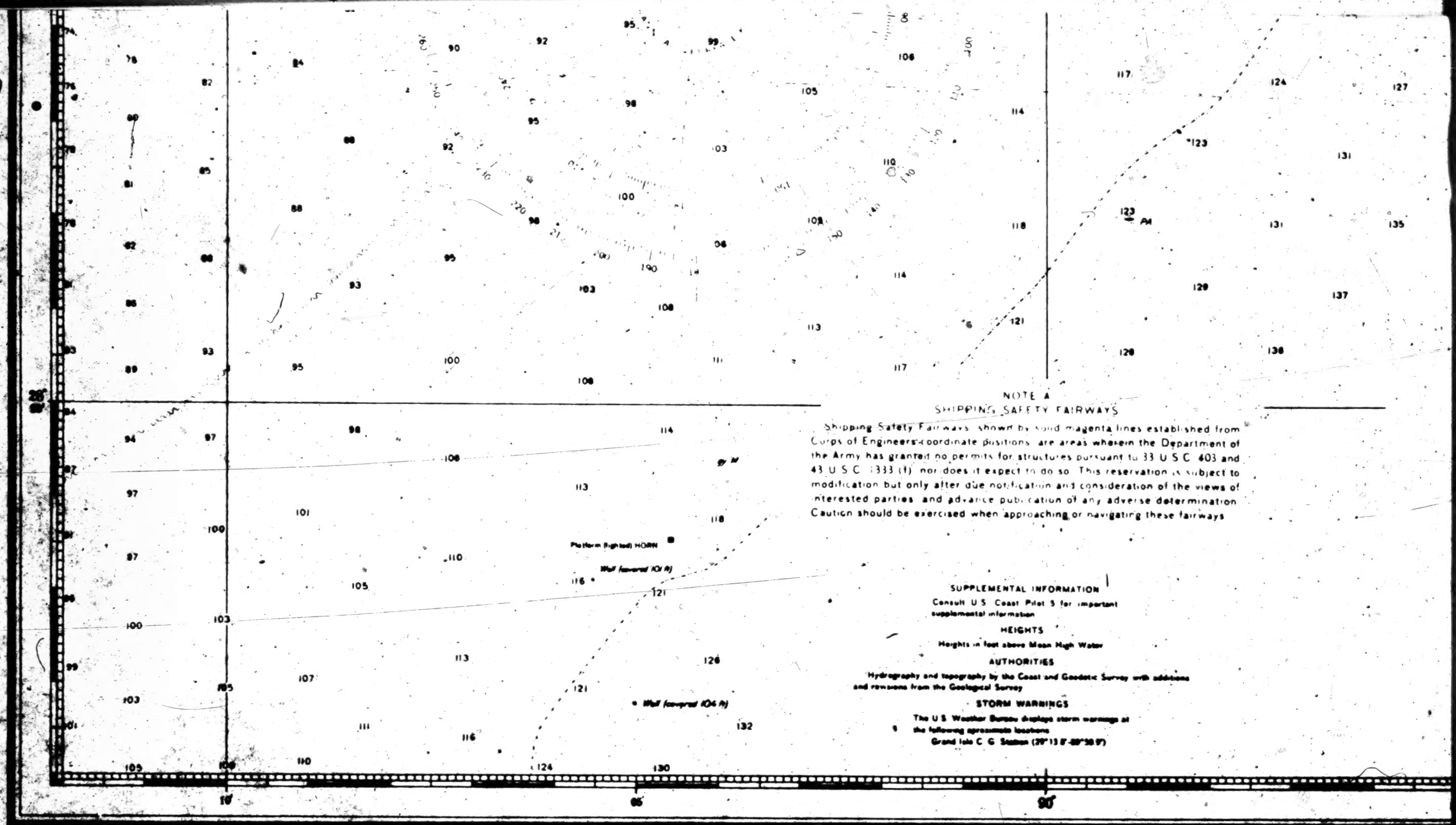




12

Dumping Ground
(by permit only)
(see note)

13



**NOTE A
SHIPPING SAFETY FAIRWAYS**

Shipping Safety Fairways shown by solid magenta lines established from Corps of Engineers coordinate positions are areas wherein the Department of the Army has granted no permits for structures pursuant to 33 U.S.C. 403 and 43 U.S.C. 1333 (1) nor does it expect to do so. This reservation is subject to modification but only after due notification and consideration of the views of interested parties and advance publication of any adverse determination. Caution should be exercised when approaching or navigating these fairways.

SUPPLEMENTAL INFORMATION

Consult U.S. Coast Pilot 5 for important supplemental information.

HEIGHTS

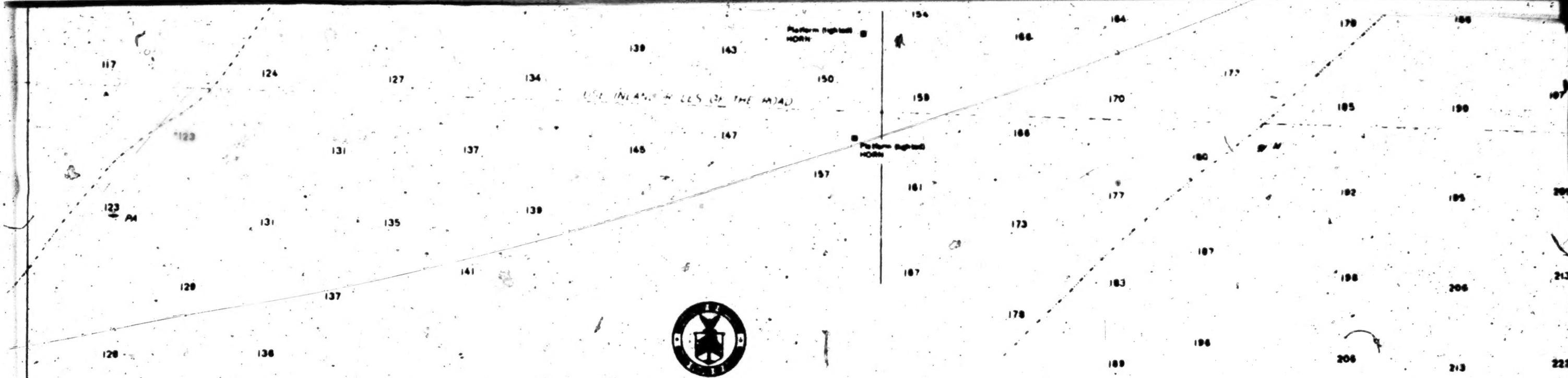
Heights in feet above Mean High Water.

AUTHORITIES

Hydrography and topography by the Coast and Geodetic Survey with additions and revisions from the Geological Survey.

STORM WARNINGS

The U.S. Weather Bureau displays storm warnings at the following approximate locations:
Grand Isle C. G. Station (29°13'N-89°38'W)



FAIRWAYS
Solid magenta lines established from
are areas wherein the Department of
ictures pursuant to 33 U.S.C. 403 and
do so. This reservation is subject to
tion and consideration of the views of
ation of any adverse determination
aching or navigating these fairways.

INFORMATION
Not 5 for important
TS
Mean High Water
ITIES
and Geodetic Survey with additions
RINGS
large storm warnings at
line
(17°13'N-90°50'W)

**UNITED STATES - GULF COAST
LOUISIANA
BARATARIA BAY
AND APPROACHES**

Mercator Projection
Scale 1:80,000 at Lat. 29°08'

**SOUNDINGS IN FEET
AT MEAN LOW WATER**

For Symbols and Abbreviations see C. & G.S. Chart No. 1

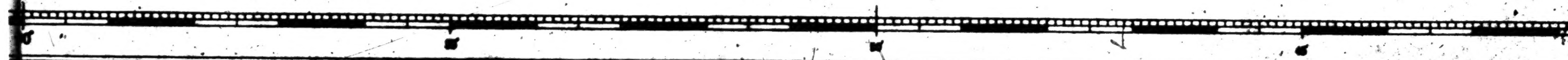
CAUTION
Submerged Pipelines and Cables
Uncharted submerged pipelines and cables may exist
in the vicinity of oil well structures and between such
structures and the shoreline. Mariners should use
caution when anchoring.
Covered wells may be marked by lighted or
unlighted buoys.

VHF WEATHER BROADCASTS FOR MARINERS
FM Station with frequency of 162.55 megahertz and
range approximately 40 miles is in continuous opera-
tion 24 hours daily broadcasting weather warnings
forecasts and reports from the WEATHER BUREAU
Office as follows:
KMB-41 New Orleans, La.

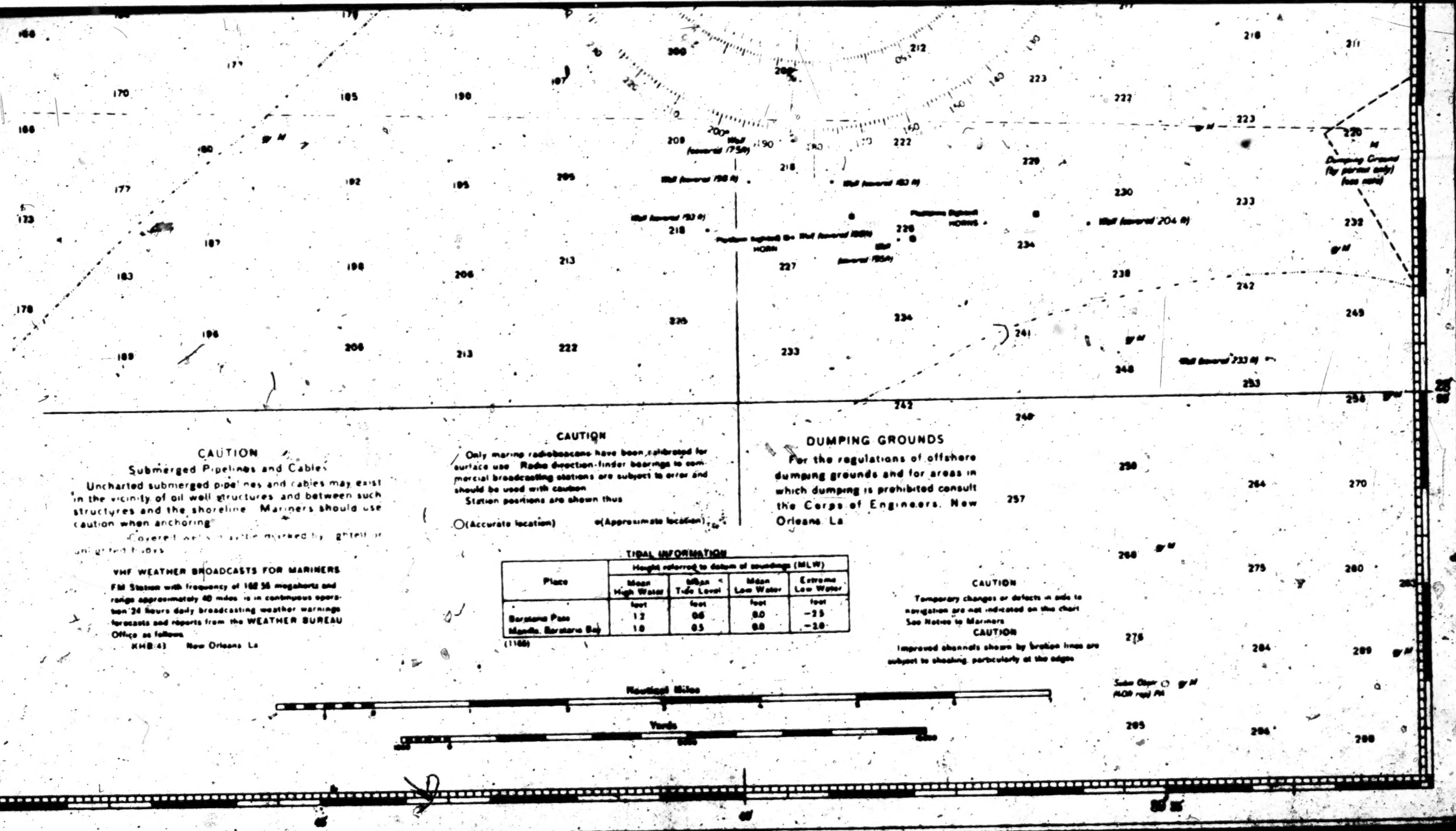
CAUTION
Only marine radiotele-
surface use. Radio direct
mercial broadcasting stati-
should be used with caution.
Station positions are sh-

(Accurate location)

Place
Barataria Pass
Mouth, Barataria
(1166)



15



CAUTION

Submerged Pipelines and Cables

Uncharted submerged pipelines and cables may exist in the vicinity of oil well structures and between such structures and the shoreline. Mariners should use caution when anchoring.

Covered wells are marked by light or unlighted buoys.

VHF WEATHER BROADCASTS FOR MARINERS

FM Station with frequency of 162.55 megahertz and range approximately 40 miles is in continuous operation 24 hours daily broadcasting weather warnings forecasts and reports from the WEATHER BUREAU Office as follows:

KHB-43 New Orleans, La.

CAUTION

Only marine radiobeacons have been calibrated for surface use. Radio direction-finder bearings to commercial broadcasting stations are subject to error and should be used with caution. Station positions are shown thus:

○ (Accurate location)

◐ (Approximate location)

DUMPING GROUNDS

For the regulations of offshore dumping grounds and for areas in which dumping is prohibited consult the Corps of Engineers, New Orleans, La.

TIDAL INFORMATION

Place	Height referred to datum of soundings (MLW)			
	Mean High Water	Mean Tide Level	Mean Low Water	Extreme Low Water
Barrataria Pass	1.2	0.6	0.0	-1.5
Mouth, Barrataria Bay	1.0	0.5	0.0	-1.0

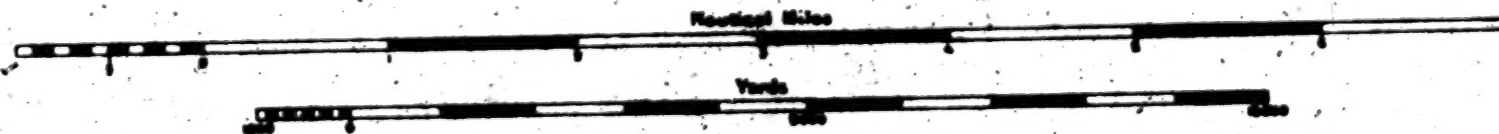
(1168)

CAUTION

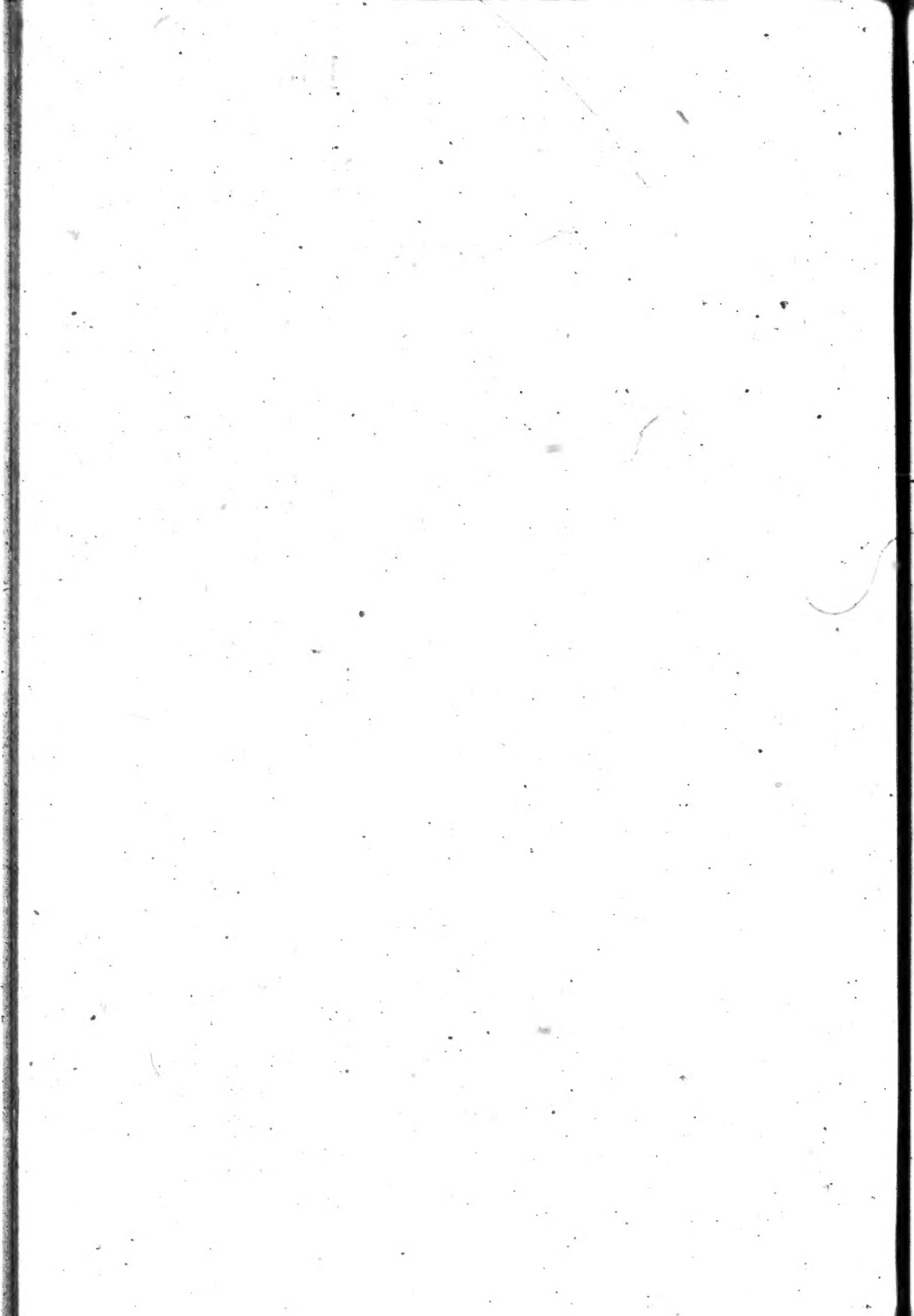
Temporary changes or defects in aids to navigation are not indicated on this chart. See Notice to Mariners.

CAUTION

Improved channels shown by broken lines are subject to shoaling, particularly at the edges.



(Barrataria Pass and Annular Channel)



CROSS-CLAIM FOR RECOVERY
OF COMPENSATION BENEFITS

(Number and Title Omitted)

For a cross-claim against Gaines Ted Huson, plaintiff, and Chevron Oil Company, defendant, Highlands Insurance Company, third-party defendant and cross-claimant, alleges.

1. Cross-claimant was, on the date of plaintiff's injury, December 17, 1965, the Employer's Liability and Workmen's Compensation insurer of plaintiff's employer, Otis Engineering Corporation.
2. Subsequent to plaintiff's injury, cross-claimant paid compensation benefits to plaintiff in the amount of \$1,110.00 and made medical payments on plaintiff's behalf in the amount of \$200.00.
3. In the event of recovery in this action by plaintiff against defendant, cross-claimant is entitled to be paid the amount of \$1,310.00 out of such recovery.

WHEREFORE, cross-claimant, Highlands Insurance Company, prays for judgment herein, entitling cross-claimant to payment by defendant of the sum of \$1,310.00 out of any recovery by plaintiff from defendant herein.

PHELPS, DUNBAR, MARKS, CLAVERIE & SIMS

By: s/Blake West
Blake West, Trial Attorney
1300 Hibernia Bank Building
New Orleans, Louisiana 70112
Telephone: 529-1311

ANSWER BY CHEVRON OIL COMPANY TO THE
CROSS-CLAIM OF HIGHLANDS INSURANCE COMPANY

(Number and Title Omitted)

Comes now Chevron Oil Company, who for answer to the cross-claim of Highlands Insurance Company, avers:

First Defense

The cross-claim fails to state a claim against this defendant upon which relief can be granted.

Second Defense

This Court is without jurisdiction for the reasons that on the date, place and time alleged, plaintiff was performing services as a laborer, he was not a crew member or a seaman entitled to recover benefits under the provisions of the Jones Act; and, the amount in controversy does not exceed the sum of \$10,000.00, exclusive of interest and costs.

Third Defense

And now answering the cross-claim, this defendant avers as follows:

I.

The allegations of Article I are admitted.

II.

For lack of sufficient information to justify a belief thereof, defendant denies as written the allegations of Article 2.

III.

The allegations of Article 3 are denied to the extent that this defendant owes nothing whatsoever to Highlands Insurance Company and/or anyone else in the above-entitled and numbered Civil Action.

IV.

Defendant reiterates and urges all heretofore asserted allegations, defenses and pleadings, incorporating such herein as if and as though copied in extenso.

Fourth Defense

Plaintiff's accident and injuries complained of in this action, if any, were caused proximately and solely as a result of his own negligence, inattention to what he was doing and willful misconduct, as well as that of Otis Engineering Corporation, its agents, servants and employees, for which defendant can have no responsibility.

Fifth Defense

Alternatively, and only in the event this Court should determine it has jurisdiction in the premises, and that defendant was guilty of negligence proximately causing the accident, the existence of which negligence is denied, then defendant avers that plaintiff assumed the risks thereof and was guilty of contributory negligence, which negligence was the proximate cause of his injuries, barring and mitigating the rights of plaintiff, Otis Engineering Corporation and Highlands Insurance Company in this Civil Action.

WHEREFORE, Chevron Oil Company demands that plaintiff's action, as well as the cross-claim of Highlands Insurance Company, be dismissed at their costs; and, for such other and further relief as this Court shall deem equitable and just.

MESSRS. McLOUGHLIN, BARRANGER,
WEST, PROVOSTY AND MELANCON
Counsel for Chevron Oil Company
720 Hibernia Bank Building
New Orleans 70112
523-5116 Our LM0143

...oOo...

PRE-TRIAL CONFERENCE

Minute Entry June 20, 1969 BOYLE, J.

(Number and Title Omitted)

A pre-trial conference was held this day.

Present: Samuel C. Gainsburgh, Esq.
Attorney for Plaintiff

Lloyd C. Melancon, Esq.
Attorney for Defendant and
Third-Party Plaintiff

Charles M. Lanier, Esq.
Attorney for Third-Party
Defendants.

No pre-trial order was entered and no trial date was set.

In view of the fact that the decision of the Supreme Court of the United States in the Rodrique and Dore cases (No. 436, Oct..

Term 1968, decided June 9, 1969), which may be dispositive of this cause, is not yet final, a further conference was set for July 8, 1969, at 8:30 A.M.

...oOo...

MOTION TO CONTINUE PRE-TRIAL CONFERENCE

(Number and Title Omitted)

Comes now Chevron Oil Company and moves the Court to continue for future assignment the noticed 8:30 A.M., Tuesday, July 8, 1969 Pre-Trial Conference on the grounds that a consent Decree and/or Judgment, regarding the outstanding Motion for Summary Judgment by Chevron Oil Company, based upon the June 9, 1969 Opinion by the Supreme Court in Rodrigue, et al. versus Aetna Casualty and Surety Company, et al., No. 436 - October Term 1968, is being prepared among the parties for submission to the Court within the next 10 days.

New Orleans, Louisiana, July 7, 1969.

s/Lloyd C. Melancon
MESSRS. McLOUGHLIN, BARRANGER,
WEST, PROVOSTY AND MELANCON
Counsel for Chevron Oil Company
720 Hibernia Bank Building
New Orleans 70112
523-5116 Our LM0143

O R D E R

Considering the above and foregoing Motion and its contents,

IT IS ORDERED that the presently noticed 8:30 A.M., Tuesday, July 8, 1969

Pre-Trial Conference be and it is hereby continued for future assignment in the above-entitled and numbered Civil Action.

New Orleans, Louisiana, July 8th, 1969.

s/Edward J. Boyle Sr.
DISTRICT JUDGE

...oOo...

MOTION AND ORDER ALLOWING THE FILING OF
AFFIDAVIT IN OPPOSITION TO DEFENDANT'S MOTION
TO DISMISS AND/OR FOR SUMMARY JUDGMENT

(Number and Title Omitted)

ON MOTION of plaintiff, through his undersigned counsel, and

ON SUGGESTING TO THE COURT that plaintiff relies in part, in opposition to the defendant's motion for dismissal and/or for summary judgment, upon the affidavit of Gerald A. Bosworth dated June 9, 1969, and that, therefore, said affidavit should be filed and become a part of the record in this cause, and

ON FURTHER SUGGESTING TO THE COURT that the defendant has no objection thereto:

LET the affidavit of Gerald A. Bosworth, dated June 9, 1969, attached to plaintiff's memorandum in reply to defendant's motion to dismiss and alternatively for summary judgment, be, and the same is hereby, filed in, and made a part of, the record of this cause.

New Orleans, Louisiana, July 15th,
1969.

s/Edw. J. Boyle Sr.
UNITED STATES DISTRICT JUDGE.

Respectfully submitted:

s/Samuel C. Gainsburgh
SAMUEL C. GAINSBURGH
Attorney for Plaintiff

s/Lloyd C. Melancon
LLOYD C. MELANCON
Attorney for Defendant,
Chevron Oil Company

s/Blake West
BLAKE WEST
Attorney for Otis Engineering Corporation
and Highlands Insurance Company

- - - - -

AFFIDAVIT IN OPPOSITION TO THE
MOTION OF CHEVRON OIL COMPANY FOR
DISMISSAL AND/OR SUMMARY JUDGMENT

(Number and Title Omitted)

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, a
Notary Public, duly commissioned and quali-
fied in and for the aforesaid parish and
State, therein residing, personally came
and appeared:

GERALD A. BOSWORTH

who, being first duly sworn according to law,
deposed and said that:

He is presently 26 years of age and re-
sides at 2109 South Carrollton Avenue, New
Orleans, Louisiana 70118; he is presently
completing his Freshman Year in the College

of Law at Tulane University in New Orleans, Louisiana; he was employed by Otis Engineering Corporation from June 3, 1963 until January 27, 1966; during that period of time he was promoted on seven different occasions, working his way from a Class "D" wireline operator's helper to a Class "B" wireline specialist; during the term of his employment by Otis Engineering Corporation he worked on various offshore oil production platforms, including Humble Oil & Refining Company's "D" Platform, located in Block 73 of the West Delta Area of the Gulf of Mexico and Chevron Oil Company's CC-Structure, located in the Bay Marchand Area of the Gulf of Mexico; like the Humble Oil Company's "D" Platform, the CC-Structure of Chevron Oil Company is a fixed platform or artificial island, completely surrounded by water; that the depth of the water in which CC-Structure is located is approximately 50 feet at mean low water; that the CC-structure is subject to wind, wave and tide; the only essential difference between the CC-Structure and the "D" Platform is one of geographic location; the Humble Oil & Refining Company "D" Platform is located approximately 30 miles due South of Grand Island, Louisiana, whereas, Chevron Oil Company's CC-Structure is approximately 9 miles Southeast of Belle Pass (where Bayou Lafourche enters the Gulf of Mexico) and 5 to 7 miles from the nearest shore; he knows of his own knowledge that during the period from 1963 until at least June of 1968 Otis Engineering Corporation owned and/or operated, through just its Houma, Louisiana, division, no less than 7 motorvessels; the names of the vessels which he remembers were the "T. G. GARWOOD," "FORSHAW," "H. O. BAILEY," "OTIS IX," "OTIS V," "A. W. CARROLL," and "E.A. KELLEY;" all of the vessels named

herein, as well as the others whose names he does not remember were manned and operated by Otis Engineering Corporation employees.

s/Gerald A. Bosworth
GERALD A. BOSWORTH

Sworn to and subscribed
before me, Notary, this
9th day of June, 1969

s/Jack C. Benjamin
NOTARY PUBLIC

...oOo...

J U D G M E N T

(Number and Title Omitted - Filed Jul 23, 1969)

The Motion for Summary Judgment asserted by Chevron Oil Company against the Complaint of plaintiff Mr. Gaines Ted Huson having been heard before me in the regular course of proceedings and considering the briefs of counsel, depositions, evidence, exhibits, affidavits, interrogatories, pleadings and the entire record, and after due deliberation thereon, I conclude and find that plaintiff filed his Complaint in the above-entitled and numbered Civil Action on January 4, 1968, and alleged therein a December 17, 1965 accident. Accordingly, more than one year has elapsed between the date of the alleged accident and the filing of the Complaint, which under the June 9, 1969 ruling by the Supreme Court in Rodrigue, et al. versus Aetna Casualty & Surety Company, et al., Number 436 - October Term 1968, plaintiff's action is now prescribed (time-barred) pursuant to the provisions of LSA-C.C. art. 3536. Therefore, in accordance with these findings of facts

and conclusions of law,

IT IS ORDERED, ADJUDGED AND DECREED that defendant Chevron Oil Company have judgment on its Motion, and the Complaint of plaintiff Mr. Gaines Ted Huson filed against Chevron Oil Company in the above-entitled and numbered Civil Action be and it is hereby dismissed; and,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there exists no just reason for delay and the Clerk is hereby directed to enter a final Judgment hereon, adjudicating fewer than all of the claims asserted in the above-entitled and numbered Civil Action, all in accordance with the provisions of Rules 54(b) and 58 of the Rules of Civil Procedure.

Read, rendered and signed in open Court in New Orleans, Louisiana, this 23rd day of July, 1969.

s/Edw. J. Boyle Sr.
DISTRICT JUDGE

Submitted:

s/Samuel C. Gainsburgh
MESSRS. KIERR AND GAINSBURGH
Counsel for Plaintiff

s/Lloyd C. Melancon
MESSRS. MCLOUGHLIN, BARRANGER,
WEST, PROVOSTY AND MELANCON,
Counsel for Chevron Oil Company

s/Blake West
MESSRS. PHELPS, DUNBAR, MARKS,
CLAVERIE AND SIMS
Counsel for Otis Engineering Corporation
and Highlands Insurance Company

...oOo...

NOTICE OF APPEAL

(Number and Title Omitted)

NOTICE IS HEREBY GIVEN that Gaines Ted Huson, plaintiff herein, hereby APPEALS TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT from the final judgment of dismissal rendered against him by the United States District Court for the Eastern District of Louisiana on the 23rd day of July, 1969.

New Orleans, Louisiana, August 14, 1969.

KIERR and GAINSBURGH

By s/Samuel C. Gainsburgh
Samuel C. Gainsburgh
1718 National Bank of Com.
Bldg.
New Orleans, Louisiana 70112
ATTORNEYS FOR PLAINTIFF

...oOo...

(1) DEPOSITION OF GAINES TED HUSON,
JULY 30, 1968

(Number and Title Omitted)

TESTIMONY OF GAINES TED HUSON, taken pursuant to Notice by the Defendant and Third Party Plaintiff, at the offices of Messrs. Kierr & Gainsburgh, 1718 National Bank of Commerce Building, New Orleans, Louisiana, on the 30th day of July, 1968 beginning at 3:00 o'clock p.m.

(2)

APPEARANCES:

For the Plaintiff:

MESSRS. KIERR & GAINSBURGH
Attorneys at Law
Room 1718
National Bank of Commerce Building
New Orleans, Louisiana

By: SAMUEL C. GAINSBURGH, Esq.

For Chevron Oil Company:

MESSRS. McLOUGHLIN, BARRANGER, WEST,
PROVOSTY & MELANCON
Attorneys at Law
Room 720
Hibernia Bank Building
New Orleans, Louisiana

By: LLOYD C. MELANCON, Esq.

For Otis Engineering Corporation and
Highlands Insurance Company:

MESSRS. PHELPS, DUNBAR, MARKS,
CLAVERIE & SIMS
Attorneys at Law
Room 1300
Hibernia Bank Building
New Orleans, Louisiana

By: BLAKE WEST, Esq.

CHARLES A. NEYREY
OFFICIAL COURT REPORTER

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S T I P U L A T I O N

IT IS STIPULATED AND AGREED by and among counsel that this deposition is being taken for the purposes of discovery, pursuant to notice.

(3) IT IS FURTHER STIPULATED that this deposition can be used in the Workmen's Compensation suit and in any litigation pending at this time in connection with the accident alleged to have been sustained on December 17, 1965 by the Plaintiff.

All objections save those as to the form of the questions are reserved until the time of the trial of the cause. The signing, sealing, certification and filing are waived.

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GAINES TED HUSON,

after being first duly sworn by me, was examined and testified as follows:

CROSS-EXAMINATION

BY MR. MELANCON:

Q Would you please tell us your full name, age, and present occupation?

MR. GAINSBURGH:

Before you get any further into this deposition, let me observe for the record that Mr. Huson has already answered a set of interrogatories, some 39 and sub-parts in number, and while I realize that the rules do not proscribe discovery in both forms,

(4) I think that we probably ought not to burden the record, Counsel, and the pocket-books of the litigants with the repetition of a lot of the questions which were already answered and particularly the first one which information Mr. Huson has already furnished in his answers to interrogatories and for the purpose of saving some time and repeated objections I would ask Counsel if he would be good enough to attempt to limit his examination purely to matters not covered by the interrogatories.

MR. MELANCON:

That is what I intend on doing but I still would like this information.

MR. WEST:

Sam, could we have a stipulation that this deposition could be used in the Workmen's Compensation suit as well as in this suit for what it may be worth? I have nothing particular in mind but since the two suits were (5) filed and the information is probably pertinent to both suits --

MR. GAINSBURGH:

I am sure some will and some will not but I have no objection to using it in any litigation pending.

MR. WEST:

Let the record show that Counsel so stipulate.

(Off-the-record discussion.)

BY MR. MELANCON:

Q Your full name? A Gaines Ted Huson, H-U-S-O-N.

Q Now, Mr. Huson, you are Plaintiff in the suit entitled Gaines Ted Huson versus Chevron Oil Company where you allege an accident having occurred on December 17, 1965, are you not? A Yes.

Q Will you please tell us when you came to work, first came to work, with your employer who was your employer on that date? A I first went to work for Otis was in August '64.

Q August of '64 and by whom were you employed, what individual actually engaged your (6) services? A Who employed me when I went to work? Gary Smith now Division Manager.

Q And where did this take place? A Houma, Louisiana.

Q And do you recall the date other than August of '64? A No, sir, I don't know the date.

Q How did you come to go to work with Otis? A I just stopped by and heard they needed some hands and I talked to Gary and I was presently employed by W. L. Sommer out of Shreveport with the head office in Houston.

Q Was it the same type of work? A No, I was selling pumps and oil field equipment in a similar line.

Q Did you have a medical examination made in August of '64 before or immediately after

going to work for Otis? A Yes, I had a complete physical before they accepted me for employment.

Q By whom was this physical made?

A Dr. Autin, I'm pretty sure, I'm not absolutely positive but I am sure that is who it was.

(7) Q Autin? A Yes.

Q And where is that? A In Houma.

Q Were you given reports on this examination? A Yes, sir.

Q What were the reports? A I say I, but I was given reports but I took the papers from the doctor and returned them to the office and I read over them and gave them to the office manager there.

Q Did the reports reveal any disability or incapacity at that time? A No, sir, not at that time.

Q Dr. Autin certified you were fit for employment? A Yes.

Q Were you hired immediately by Otis?

A Yes, sir, I went to work the following Monday.

Q What type of work did you first perform? A Wild line helper.

Q Now when you first went out as a wild line helper who was your boss man or pusher?

A When I first went out -- now let me explain one thing: The helpers work with operators on each different job and you may (8) work a dozen different jobs with a dozen different

operators and you're in the crew and the first job I had was with Cycil Richards working directly under Gary Smith, the Service Specialist at that time.

Q Did Mr. Smith go out in the field or remain in the office? A He went out in the field occasionally to check on a job if we were having trouble but I would say he was in the field half the time.

Q Was this generally true in August of '64 and December '65, this type work?

A That I worked with various operators?

Q Yes and throughout this time. A That is right.

Q Gary Smith was the bossman? A He was my superior and service specialist.

Q In this type work as wild line helper you say you worked with a crew? A A two-man crew.

Q You were part of the two-man crew?

A No, there's an operator and a helper.

Q And you were not assigned to any particular (9) operator during this particular time from August of '64 and December '65?

A No, sir, Otis' policy at that time was a man was assigned to no operator except on the boats and there were only two there and I worked on the boats but never permanently.

Q What was the chain of command with respect to your actual work during the period August '64 and December '65, by that I mean, who directed your actual labor? A When we went on a job I was directly responsible to the operator I was working for and he and

I were both in turn responsible to the service specialist, Gary Smith, at that time.

Q These are employees of Otis Engineering?

A Yes.

Q Do you recall on December 17, 1965 who was the operator you were with? A Carmel Fesi.

Q And on that particular day there were only two of you in the work crew? A Yes.

Q And where were or where was the work being performed for Otis on December 17, 1965 (10) by you and Fesi? A We were working on C.C. Structure for Chevron in Bay Marchand.

Q For what period of time either on December 17, 1965 or prior had you been working solely on C.C. Structure and was this a one-day job or were you working there several days? A No, we had worked there the previous day I am sure; I am pretty sure we only worked there one other day and this might have been the third day but I am pretty sure it was the second day.

Q What type of work was being performed on December 16 and 17th on C.C. Structure by you and Mr. Fesi? A They had a well that was clogged up and wasn't flowing. It was full of sand and junk and I don't know what was all in it but we were trying to clean it out.

Q Was there anything unusual with respect to the type of work being performed then and the type of work you were doing between August 17 and December 17, 1965?

MR. GAINSBURGH:

(11) What do you mean by "unusual," do you mean unusual with respect to the difficulty with the well?

BY MR. MELANCON:

Q The type of work he was doing removing sand or whatever else you might have found in this particular bore on that December 17, 1965. A Let me say this, there was nothing unusual in the well bailing operation.

Q In what? A The well bailing operation we were performing. That was routine work.

Q Did you encounter anything that was unusual in this particular job on December 17, 1965? A Well, they decided, and when I say they I mean Carmel and Polle, who I believe was Chevron's man that was on the structure --

Q I didn't hear that. A Mr. Poole was Chevron's man that stayed on C.C. Structure, I don't know but he and Carmel decided to pump water in the well which was unusual. We didn't often do that.

Q Did you ever pump water in a well prior to (12) December 17, 1965? A I had been on one job on a boat when we had a Halliburton pump that came out and pumped water in a well.

Q What was the purpose of pumping water in the well on December 17, 1965? A To tell you the truth at that time I was only working a few months and what I think they intended to do was fill the well with water and leave it overnight and the next day draw

the water back out and flush the sand and trash.

Q Go ahead. When you first went out to C.C. Structure, and I assume that would be the day before or December 16, 1965, what was the problem or were you called out there to remedy, or change, or correct, or do?

A Carmel worked regularly for Chevron and worked a regular schedule of six days on and three days off and it just happened on that hitch I was his helper and went out with him. We were called over there to pull some Kemco side pocket dummies and gaslift valves but we ran into the well problem the first day. We pulled some (13) and reset some and we couldn't get them to set right because of the sand and trash and that is when we started to clean it out and they decided to pump water. I had nothing to do with that decision because I was the helper. I didn't know too damn much about what was going on at the time anyway.

Q In any event your chain of command was still the same on December 17 to the extent that you received your direct orders or supervision from Mr. Fesi? A Fesi, yes, sir.

Q And whatever was decided between Fesi and Poole you might not have been aware of because of the position you resided in?

A Right.

Q Did anything unusual occur on December 17, 1965 with respect to your case? A Yes.

Q Will you tell us, please? A When they decided to hook up the flow line to pump water in the well, Carmel and I, -- the particular well we were working on is off

from the side of the platform (14) and it is approximately 20 feet lower than the rest of the wells that are on that structure --

Q Do you remember the layout pretty well with respect to the well? A Yes, sir, I could make you a sketch.

Q You remember what number well it was? A No, sir, I never did get any records on it.

Q Suppose why don't you just take this and sketch out on this piece of paper the bird's-eye view looking from above down on the floor where this might be. Anyway this was a completed well that was already drilled? A Yes. Now this is going to be a very rough sketch. (The witness then complied with Counsel's request.)

Q Let's see now, you have sketched out on this piece of yellow paper a layout that would appear from up above looking down. A Yes, and approximately, an approximate layout.

Q Can you point with your pencil the well or bore we are talking about specifically? A This is it right here (indicating).

Q Where the black dot is? A Yes.

(15) Q At the head of the stairway?

A At the bottom of the stairway 'cause this is the head of the stairway going down.

Q There was a well in that position? A Yes, it is.

Q What is this eight holes for? A I don't know how many wells they had but a

majority of the wells were up like this and the tree was on a level with the top deck of the structure. This particular well's tree is between 20 and 30 feet approximately below the level of the structure.

Q How high off the water was that platform where the well was located? A The structure to the top deck of the structure?

Q To the position of the well you were working on. A I would judge 15 to 20 feet.

Q 15 to 20 feet. Would you just run an arrow off from this point and indicate "well being worked on." Now when you first arrived the day before the occurrence was there a Christmas tree on this particular well or bore? (16) A Yes, there was.

Q Was it necessary to remove the Christmas tree? A No, it wasn't necessary.

Q On December 17 the Christmas tree was still there? A Yes.

Q Tell us then what happened on December 17, 1965 to you. A All right. After they had made their decision to pump water into the well, Carmel and myself walked down the stairs to this location and Mr. Poole stayed above to pass down some equipment to operate the pump.

In order to tie into this well, the flow line I had to tie in was on the back side of the well towards the bottom of the platform itself and on this well I have shown two levels here and this is the level of the grating where you get off the boat right here and then they have a raised grating that is approximately 16 or 18 inches

above the level of the main floor which you can stand on while working on the well. The Christmas tree (17) is a little too high to stand on the level and work on the valve.

The flow line we had to tie into was on the back side of this well and between two grates, if you follow me. They have two gratings there like this (indicating).

Mr. Fesi gave me the wrench and told me to go down and break the bull choke, break -- it wasn't a bull choke but to break the coupling and break the line down. It was necessary for me to get on my side and crawl underneath this grating.

I was laying on my left side in this position with my arms over my head to pull on the wrench to break the line. The line was hard to break and when I gave it a country break I felt a severe pain and I hollered for Carmel to help me get out from under there and that was the first indication that I had that anything happened.

Q What time of the day was this?

A It was after lunch and I don't know what time but approximately 1:30 - 2:00 o'clock.

(18) Q And who was present when this occurred? A The three of us. Carmel and I went down here and Poole was directly above us where the pump was.

Q On the top deck? A Yes.

Q Poole was on the top deck above you and Fesi? A Yes.

Q What distance separated you and Mr. Poole? A Approximately 20-30 feet maybe.

Q Was Mr. Poole aware of this cryout you made about your back?

MR. GAINSBURGH:

I think it is kind of difficult for Mr. Huson to testify of what somebody else was aware of and whether he thinks Mr. Poole could have heard him or not.

BY MR. MELANCON:

Q Did he see this happen or do you know if he saw it? A I don't know. To the best of my knowledge he knew about it immediately afterwards. Carmel had to help me up the stairs and he come over and met us at the top of the (19) stairs.

Q The directions to break this valve were given to you by Mr. Fesi? A Yes, after Mr. Poole and Fesi made the decision to do this.

Q To run water in the well? A Yes. They had also discussed too before they made this decision with Marshall Babin, I am pretty sure, I am positive they had discussed and talked to him. He was the Chevron foreman over in that end of the field.

Q Where did that conversation take place and were you present with Mr. Babin?

A No, sir, I was out cleaning the unit and Poole and Fesi were in the living quarters of the rig.

Q Had you ever disengaged or uncoupled a joint in a similar fashion as you had at the time you cried out with respect to your back?

MR. GAINSBURGH:

What do you mean by "similar fashion," Mr. Melancon?

MR. MELANCON:

(20) Had he ever broken a valve previously in a similar fashion.

THE WITNESS:

I had broken lines of this type but never in this position.

BY MR.. MELANCON:

Q What size of a line was this you were actually uncoupling? A I am pretty sure it was a two and a half inch but I'm not positive. It was approximately two or three inch line.

Q Two or three inch? A Yes, sir.

Q And what type of wrench were you using on this? A A 24 inch Stinson wrench.

Q And where did you obtain the Stinson wrench from? A It was our wrench and part of our Otis tools.

Q That you had brought on the job with you? A Wait, let me go back here. We always carried a hand tool box and I don't know for sure if it might not have been a Chevron wrench. Sometimes they didn't have a 24 inch with them but it is a good possibility.

(21) Q You say "sometimes they didn't have

a 24 inch wrench," who? A Otis didn't with their hand tool box and they had them on the structure and we used them. We were using some of their tools when we were working on the unit. We had our own small tool box but I think it was a Chevron wrench but I'm not positive.

Q You don't recall whether you obtained the wrench immediately prior to the occurrence you mentioned? A No, Carmel and I carried the wrenches down with us but we had been using them on other work that we had for two days, and I don't recall where it came from originally.

Q All right. Then as I understand you didn't continue to work on the job any longer after this occurrence? A No, we went back upstairs and walked around for a while and I thought I felt better and they decided, they called and decided to move us to another rig, a rig called the HUSSLER. They called Fesi and Fesi wanted to call the helicopter and send me in and I thought that I would be all (22) right but we started to move from the C.C. Structure to the HUSSLER and I picked up the hand tool box, which is a box 20 inches long, a foot deep and 18 inches wide which weighed approximately 25 pounds, but when I picked the box up I got another severe pain in the back and I almost dropped it overboard when I was handing it to Fesi who was on the boat. I got on the boat and he took me to the HUSSLER and I got off at the HUSSLER and Fesi called the ship and they called the helicopter.

Q . Immediately after you cried out when you were attempting to break the joint or line, had you broken the line? A I was

just breaking it. I broke the connection but I didn't undo it.

Q Did anybody finish that job to your knowledge? A Fesi helped me get up the stairs and I think he went down and connected it but I'm not positive and I can't say for sure.

Q Was this a line you were taking loose and adding another line on or was this -- A We were breaking loose the line in order to (23) connect a flexible hose to put water in the well.

Q As I understand your testimony you actually broke the connection? A Yes, sir, I am pretty sure I broke the connection.

Q But you didn't couple the flexible line to run the water and you recall if Mr. Fesi went down and connected the line? A To the best of my knowledge he connected the line and proceeded to pump water which it was going to take quite a while for this small pump to pump the water in.

Q Where were you? A On the top level of the structure.

Q Are there living quarters up there? A Yes, sir, there are.

Q And is this a structure separate and apart from any other structure? A Yes.

Q With no connecting platform? A No, a permanent structure.

Q And to the best of your knowledge after you came topside that possibly Mr. Fesi went down and connected the flexible line?

(24) A To the best of my knowledge I don't recall who finished it. I just don't know. I think he did but I'm not positive.

Q Do you remember how long you remained on the C.C. Structure after this incident?

A Not very long, approximately 45 minutes. I don't know for sure but it wasn't too long.

Q And in any event as far as Mr. Fesi whatever work you had to do or carry out while on the C.C. Structure had come to an end and you were to go to another structure?

A No, it hadn't come to an end. They had a rig on this other end and they wanted us to do some work there and then return to the C.C. Structure, which is a common practice and they had so many crews and they would shut down production to work on a rig job somewhere else.

Q You were up on topside after this occurred? A Yes, sir.

Q And you remained there 45 minutes and how were you to get over to the next structure you were to work on? A They'd send the crew boat over.

Q(25) That would require you to come back down the stairs? A Down the stairway.

Q How did you transfer from the C.C. Structure to the crew boat? A They -- The crew boat, when I come down the stairs Fesi carried the tool box. I attempted to pick it up to get it and he said "I will carry it." My back was still hurting and I was still stooped over and we walked down to the bottom platform and the boat pulls up close to the structure and they have a rope and you

hold on the rope and step off on the boat, if it is not rough, and it wasn't rough that day.

Q You remember the name of the crew boat?

A The LADY BLACKIE.

Q And did the crew boat only take you and Mr. Fesi to the HUSSLER?

A Yes, that is correct. Fesi got on the boat first and I was handing the tool box to him and I almost dropped it and so then he helped me, helped me get on the boat.

Q How far away from the C.C. Structure was the HUSSLER? (26) A In time?

Q With the crew boat. A The HUSSLER was in sight. It wasn't a long run, only approximately 20 minutes.

Q Did you actually get over to the HUSSLER? A Yes, sir, we went directly to the HUSSLER and got off there.

Q The same way? A Yes.

Q Was the HUSSLER a fixed structure?

A The HUSSLER was a movable rig but it was fixed at that time.

Q In any event the manner of getting from the crew boat to the HUSSLER was the same as from the C.C. Structure into the crew boat?

A Correct.

Q Did you encounter any difficulty coming from the crew boat to the HUSSLER? A Yes, Fesi helped me get off the boat and up the stairs and by that time I knew I couldn't work. In fact when I was riding over in the

boat he told me "I'm going to call for a helicopter" and when he got up on the deck, the top deck of the (27) HUSSLER he got on the radio and called.

Q And had Fesi spoken to anybody else other than to call the helicopter on the HUSSLER? A He had spoken to Poole previously and when he got there he spoke to the superintendent, I don't know what his name was, and he called Marshall Babin, and that is who he called that I was hurt and to send the helicopter.

Q Of course Mr. Babin was with Otis Engineering? A No, sir, he was Field Foreman for Chevron.

Q Did Mr. Fesi mention calling Otis Engineering in connection with this?

A No, he called the Chevron ship -- he went to the living quarters where they stayed on the rig and called for the helicopter in the field and he told the people there to send the helicopter to take me to shore.

Q To your knowledge do you know if Mr. Fesi made arrangements with Otis to get somebody out to replace you? A Sure did later but what they did at that time is they had another boy, Sammy Harthorne, (28) an Otis operator --

Q This was on the HUSSLER? A No, he was in the field with a helper and Sammy was to go in on his days off on the 17th and what they did is Sammy rode in with me on the helicopter, they let him go in with me when he arrived on the HUSSLER and Fesi kept the helper that was with Sam.

Q The helicopter took you to what port or

point? A The helicopter came to the HUSS-
LER and flew me back to the S-25, which was
a crew boat, where Sammy met me over there
and we could double back and they flew us in
to Leesville.

Q From Leesville -- A Yes?

Q From Leesville you were taken to where?

A Sammy drove me to Houma.

Q The Houma hospital or a doctor? A To
a doctor, yes.

Q What doctor? A To the doctor, the
first one I went to see was Dr. Tom Hadel.

Q This was on the 17th of December?

(29) A When he took me directly to the shop
is where he took me first.

Q Otis Engineering's? A Right, and they
had me make out an accident report.

Q This was on December 17, '65? A True,
right.

Q And then what did you do after the ac-
cident report was made out? A I had Bill
Miller, the Office Manager for Otis, --
Otis had a company doctor, I don't remember
what his name was, that they wanted us all
to use. Anyway I asked Bill to call because
it was late -- I don't know what time it was
but it was after dark about 7:00 or 8:00
o'clock and I didn't go to the doctor that
night I went to see Dr. Tom Hadel the next
morning.

Q Tom Hadel? A Yes, I didn't know him
but my wife's mother recommended him. In-
stead of going to the company doctor I went

to him.

Q Was there any particular reason why Mr. Bill Miller didn't get you a doctor on December 17, 1965? (30) A When -- I don't remember the doctor's name he called. And --

He called him and while talking to him he asked me if I wanted to go meet him at the hospital that night and I told him no, that I thought I was all right and that I'd see him in the morning and that is the reason I went on the -- went on to the house and the next morning I went to see Dr. Hadel.

Q What was the name of that doctor?

A That is -- I don't remember the one Bill was calling but I am sure they have the records.

Q Did you make arrangements with him to see him the next morning? A No. No I told him I'd see him the next morning but that night like I say my wife's mother recommended the other doctor, Dr. Hadel.

Q Where was Dr. Hadel located? A On Barrow Street.

Q In Houma? A In Houma, yes, sir.

Q And what time did you go to see the doctor, (31) Dr. Hadel? A Approximately 9:00 o'clock the next morning.

Q And what did he do for you? A He made X-rays and examined me and at that time he diagnosed that I had a muscle spasm in my back rather he thought -- wait a minute, he didn't find anything in the X-rays and he gave me some pain relievers and pills for, a prescription for some muscle relaxants and

-- what the hell they call them?

Q This was the first time you had gone to Dr. Hadel? A Yes.

Q Had you ever had trouble with your back other than this December 18, '65 occurrence prior to this time? A No.

Q This was related to Dr. Hadel at the time on December 18? A Right. He took a history.

Q Did you remain then at Dr. Hadel's office or what did you do? A Well, he sent me home after he give me the prescription and examined me and I went (32) and had the prescription filled and I went home and went to bed. I went back to see Dr. Hadel not the next day but the following day.

Q That would then be the 20th? A 17th, 18th, 19th, 20th -- yes.

Q Were you any better then? A No, my back was still the same.

Q What did Dr. Hadel do for you? A He examined me again and told me that he thought I had a strained muscle.

Q Had you been in touch during that period of time between the 18th, 19th and 20th with Otis? A Yes, soon as I left Dr. Hadel's office the first day when I went in to see him, after I got to the house I called the shop and told them that the doctor told me to go --not to go back to work for a few days and he was going to see me again.

Q You remember who you spoke to?

A No, I don't remember whether it was Bill Huber or Bill Miller. 'cause both were office managers.

Q What did you do after the visit of the 20th? (33) A I went back to see Dr. Hadel again. I don't know positively how many times I saw him but I think three and he still continued to say to take the muscle relaxant drugs. So I stayed off a few days and I thought my back was getting a little better, and in fact I was up and around, and I went to tie my shoes one morning and the thing gave me a sharp pain again and so I went to see Dr. H. L. Gibbons.

Q How did you happen to see Dr. Gibbons?
A My wife, another second story deal, she went to him and one of the boys in the shop had.

Q You had never been to Dr. Gibbons before that? A I went one time to get a shot. I'm pretty sure that was Dr. Gibbons.

Q What did Dr. Gibbons find? A He got the records from Dr. Hadel and made some more X-rays, and an examination and he diagnosed it as severe muscle spasms and continued through therapy and then he referred me to a doctor, to a physical therapist and his name is Barriieux.

Q This is in Houma? (34) A I can't remember his name -- Barriieux.

Q Did he do this, Dr. Gibbons do this, on the very first visit or after he had seen you once or twice? A I believe I saw him once and on the second visit he sent me over to Barriieux.

Q Did Dr. Barrlieux make any X-rays?

A Yes.

Q Did you go to see the physical therapist daily? A Yes, I saw him every day for a couple of weeks and then three times a week.

Q During that period of time you were going to Barrlieux did you also go to any other doctors? A No, just Dr. Gibbons. I went to see Dr. Gibbons once a week approximately, once a week, and I don't have the exact times but I am sure he has the record.

Q What happened during that period of time, did you get any better? A Yes, gradually my back got better and I felt it had gotten better and it got to the point where I didn't have any severe pain. At night it hurt when I relaxed and I'd go to sleep. I didn't take them all the (35) time but I had pain medication and when the pain got too severe I would then take them and I was taking muscle relaxant drugs all the time.

Q Now did you finally come to a point of time when you stopped seeing Dr. Gibbons, or Dr. Hadel, or the physical therapist Barrlieux? A Yes, I did.

Q Give us the approximate date that it might have been and was it a month? Or two months? Or six months? Or approximately when? A It was about four to five weeks.

Q Now who suggested this termination of this whatever they were doing for you in four or five weeks, was this the physical therapist Barrlieux or one of the doctors?

A I asked Dr. Gibbons to give me a release

to go back to work if he thought I was able.

Q Did he give you a release? A Yes, and he said "Go and try it" and I thought possibly it was over with.

Q This was approximately four to five weeks after December 17, 1965? A Yes.

(36) Q Did you go back to work? A Yes, I went back to work and I only made two jobs. I don't know how long I worked but it was a few days and then my back gave out. I didn't have an accident and was no one special episode but it hurt all the time. I -- All our work required that you had a two-man crew and it required the handling of heavy pieces of equipment in routine work.

Q Do you recall the month you actually went back to work with Otis after December 17, 1965? A No, I don't offhand.

Q Do you remember the first job you went on with Otis after December 17, 1965?

A No, I don't.

Q Were you working out of the Houma Office?

A Yes.

Q Was it near by here in Louisiana?

A Here in Louisiana offshore somewhere. I think it was back for Chevron with a boy from Texas but I'm not positive 'cause I worked for him again after that but I don't remember whether it was then.

Q Do you recall how long a period of time these (37) two jobs took before you had trouble again? A I don't recall the exact time but it was a short period of time, a

few days or possibly a week or two. It wasn't very long.

Q You say it wasn't a particular incident but it was just discomfort? A Yes, my back kept hurting and it kept giving me trouble and I went back to Dr. Gibbons and he sent me back to the physical therapist again and this continued for I don't know -- a few weeks, two or three weeks, and then I asked Gary --, I asked Dr. Gibbons if I could get a light duty release to work in the office.

Q Now the second episode of employment when you went back after December 17, 1965 and were you still working for Mr. Fesi?

A No.

Q Who were you working for that period?

A Working for Gary Smith all the time and so I say each job we would go on would be with a different operator and I don't even remember which one was which because I had thirty-something operators and I don't (38) remember who I went with the second time but they would have it on their records.

Q You don't recall Fesi being involved in either one of the operations though?

A No, I don't.

Q Now were X-rays taken once again after you reported back to Dr. Gibbons a second time? A I honestly don't remember. He took X-rays two or three times and I don't remember if he took them that time or not. I believe he might have made one or two.

Q Was Dr. Gibbons sending reports to Otis?

A Sending reports to Otis and the insurance company.

Q You say you went back to Dr. Gibbons and he suggested the physical therapist Barrioux and you went through this a couple more weeks? A I was off for longer than that this time.

Q This is the second episode? A It wasn't an episode it was just, well --

Q The second time off. A The second time I was off, okay.

Q This went on how long? (39) A I don't know for sure but it went on two or three months and when I was asking Gibbons to, I asked the doctor to give me a light duty slip and I talked to Gary and asked him would he give me a job in the office working as a night dispatcher and he said okay.

Q How long were you in the office as night dispatcher? A At this time approximately eight to nine months.

Q That brings us pretty close to the fall or in the fall of 1966. A Uh huh.

Q During this period of time when you were working at night did you encounter any difficulties with your back? A Yes, I had trouble off and on all the time.

Q Who did you complain to during this period of time of Otis? A Once I was helping load a truck with equipment going to Dallas and Bill Miller was there and I complained about it at that time, about the pain, and then I quit helping load and they finished the loading. (40) Various operators, Morris Greene one time was there when I had to go home when I picked up a packer to go on the job and my back was hurting and I had

to go to the house early.

Q After these different instances where you had complaints did you finally quit your job or what happened? A No, I didn't quit the job. I stayed as dispatcher like I'm saying for seven or eight months and for the last two or three months I wasn't doing any heavy work and I quit lifting anything heavy. They had a boy working with me at night and he would do that and then my back got better.

So my step-father was killed in an automobile accident in Shreveport, which is my home, and my mother wanted me to come back home and I wanted to myself and I asked for a transfer from Houma to somewhere close to Shreveport and Otis had closed their office in Shreveport so I transferred to Long Branch (sic). I could have gone to work for Halliburton but I thought I'd go to Longview with (41) Otis and I felt I'd be better off even though Halliburton and Otis are just about the same company.

Q All right. A So when I transferred up there -- Let me say one thing that I left out: At the time I was off for three or four months and when I come back to see Dr. Gibbons he referred me to George Battalora, an orthopedist.

Q Did you see Dr. Battalora? A Yes, I saw him in Houma several times. He came over to Houma once a week and I saw him here in New Orleans one-time.

Q And Dr. Battalora took X-rays? A Yes, he made X-rays and he again diagnosed it as muscle spasm and strain.

Q Now did you actually go to work for Otis

in Longview? A Yes, sir. Dr. Battalora gave me a release to go back in the field and I transferred to Longview as a wild line helper.

Q How far from Shreveport is Longview?
A 60 miles.

Q You were residing in Shreveport or Longview? A I moved to Longview. My home is in Shreveport.

(42) Q What type of work were you doing with Otis there? A When I transferred back I went back to work as a wild line helper.

Q And what area of operations were you then working in? Were you working offshore?
A No, it was in East Texas, North Louisiana, and Southern Arkansas.

Q And who was your immediate superior or bossman up there at Longview?

MR. GAINSBURGH:

Do you know the bossman's name in Longview, Texas? I don't know if it is in his answers to interrogatories.

THE WITNESS:

I don't know.

BY MR. MELANCON:

Q In other words you don't recall who this was? A I don't recall the superior at the moment but I will recall it.

Q Do you recall any operators you worked under in Longview, Texas? A I worked under Forrest Bravhon.

Q That is an operator? (43) A That is an operator I worked for and he was not the manager but an operator.

Q And for what period of time did you work in Longview, Texas for Otis? A I transferred up there in April.

Q April of '66? A Yes, and I don't recall all together but I didn't work but five or six weeks before I had to go to the hospital.

Q About how many jobs would you say or estimate you worked on during that five or six-week period in Longview, Texas? A Say an average of three a week, say fifteen, sixteen.

Q Was this the same type work, wild line operator, the same type work you were doing on December 17, 1965? A Yes, sir, same type.

Q Did you have any accident or incidences that occurred during that five or six-week period while working out of Longview, Texas? A I had no accident as such. In the first week I went back on the trucks my back gradually started giving me trouble and I told (44) Forrest on several different occasions I'd have to go back and see a doctor and it got progressively worse and the last job I was on I was working for Humble Oil in Trawick, Texas.

Q Where? A Trawick. We had been working on this job, the same well, four or five

days.

Q What type work were you doing, if you recall? A Oh, a lot of things. The first we had to do was they busted a tool in two and we were fishing it out. They had tools in the hole and we were using three sections of heavy two and a half inch lubricator that you use on that particular job. My back kept hurting worse and worse every day down there and finally the last evening I worked with him I told him my back hurt and I was supposed to go back on the job next morning but when I got up at 6:30 my back was hurting so bad I couldn't straighten up and I called the office and told them to send somebody else.

Q You recall who you spoke to in the office? A The Office Manager, a young boy, he hadn't been (45) there a long time but he was office manager.

Q He then checked you out? A Yes, I told him I had to go to the doctor.

Q And he sent a replacement? A Yes, he got somebody else to go out.

Q What doctor did you first see after that? A I went to two -- I asked if he knew anybody there or if Otis had a doctor and he didn't know of one and the manager -- I still haven't thought of his damn name yet -- but anyway he called him and then he called me back and he gave me the name of two specialists -- no, he give me the name of the company doctor and I went by to see him that morning about 8:30 and he wasn't there and the receptionist gave me the name of two orthopedists and I went by both offices and one of them was at the hospital or something and anyway

the other was in the same building and I went to his office and sat in his office for about one hour and a half and I never saw him and my back was about to kill me and so I got in the car and drove to Shreveport, which I-20 (46) it's about a one-hour drive, 60 miles, to see my family doctor.

Q What was the name of this family doctor?
A Dr. H. L. Cohenour.

Q These -- This was in April '66? A May.

Q May '66? A I think.

Q And did you give him a history of what happened? A Yes, I gave him a complete history and he sent me to a specialist and it was Dr. Ray Keene in the same building, the P & S Building.

(Off-the-record discussion.)

BY MR. MELANCON:

Q In other words then that period in Longview, Texas was in April 1967? A Right.

Q And this, the doctor visits you are referring to in the Shreveport area were in May of '67? A May of '67, right.

Q Now what resulted in your visit in May of 1967 with the doctors in Shreveport? A Dr. Keene, I gave him a history of my past (47) trouble and he examined me and made X-rays and gave me some more muscle relaxants and pain pills and I went back to see him a couple of times and I kept getting worse and then he put me in the hospital and did a myelogram on me.

Q What hospital? A The P & S Hospital in Shreveport. I stayed there five days.

Q After the myelogram what? A After the myelogram of course he told me I had a herniated disc second lumbar vertebrae and he continued the therapy and prescribed an orthopedic back brace which I wore and wore all the time for about six weeks and I still wear it occasionally even now.

Q Now do you still continue to see the doctors in the Shreveport area? A No.

Q When was the last time you saw a doctor in connection with this? A I saw Dr. Keene several times after this and he finally gave me a release with a 5 percent residual disability is what he (48) said and after he released me I haven't seen a doctor in connection with my back since then.

Q Give us some idea of what date we are speaking of.

MR. GAINSBURGH:

I think the interrogatories indicated September 1967. Is that about right?

THE WITNESS:

Yes, I was just fixing to say it was around August but that I didn't know for sure.

BY MR. MELANCON:

Q During the period of time since you left Longview, Texas employment with Otis have you gone back to work with anybody? A Yes, of course I didn't. I was off until after

I was released and I worked for or with my father for about eight months.

Q In what type of work? A He is in the wholesale produce business. I was selling for him.

Q Then what did you do? A I moved back to Houma and went to work for (49) Lane Sales.

Q What kind of work? A Light duty work in the office and answered the phone, dispatched the crews, the same type of similar work I had done for Otis but my classification was lower and I put, I was loading exploration charges in perforation guns and things like that.

Q Are you still doing that now? A No.

Q Are you employed? A I am employed by myself. I went in the produce business down here by myself.

Q Here in New Orleans? A In Houma. I haul the stuff, I buy it from my daddy and sell it down here, put it in a cooler and I'm just getting started and it takes a while and I don't know how I'm going to do.

MR. MELANCON:

Thank you.

EXAMINATION

BY MR. WEST:

Q Insofar as your being able to do physical work, what is the present condition of your (50) back? A I can't do any oil field

work of the type I was doing before. I can't do roughnecking or work for Otis. When I went to work for Lane Sales I made application to go to work in the field but when the company doctor examined me he turned me down for field duty and gave me an okay for light duty in the shop.

Q What doctor, do you know? A I went to see Dr. Simenton -- it is Lane & Company down in Houma and they would have the records.

Q What salary were you making with Lane? A \$2.30 an hour and once in a while you make overtime but my carry-home pay was \$92.00 a week and you can't live on that and that is the reason I quit.

Q What was your income with your father in Shreveport? A \$500.00 a month which I wasn't earning that.

Q Do you have any expectations of what your salary is going to be when you get the business going in Houma? A No, I don't.

(51) Q It's too early? A I don't have any idea. It might not be anything.

Q Did you fix your own flat tire that you got when you were on your way to this office today? A No, I didn't.

Q Who fixed it? A A boy in the service station.

Q Which service station? A I don't know.

Q On St. Charles Street? A Off of St. Charles.

Q What kind of service station was it?

A I don't know.

Q And you don't know the address? A No, but I could get it.

Q How would you get it, by riding back by?
A Yes.

Q And would you do that on your way home and tell your lawyer the name? A Yes, sir, I'll call Sam and give him the name and the address.

Q Going back to the spring of 1967, I take it that you went to Dr. Battalora and asked (52) him to give you a discharge to go back to work in the field? A I asked him, about two months before I finally got it, about getting a discharge and he said all right, and he was going to mail it and I never did get it, I went to Dr. Battalora's office, and they called from Houma to his office in New Orleans, and I asked him if he thought I was able to go back in the field, and he then at that time mailed a discharge or gave one to Bill.

Q You felt at that time you were able to go back in the field? A I thought I was all right.

Q How long a period of time was it that the back hadn't given you any trouble?
A The last three or four moths, I suppose, it was giving a little trouble maybe at night when I had been on my feet on concrete all day. It hurt a little at night but not enough to stop me from working.

MR. WEST:

That's all the questions I have.

MR. GAINSBURGH:

(53) Mr. West, do you think you can produce for these gentlemen the witnesses he has referred to, Mr. Bravhon and Mr. Fesi?

MR. WEST:

As far as I know both men will be available and can be deposed.

BY MR. WEST:

Q Do you know Mr. Jim Tubbs? A Yes.

Q Does he know anything about any of your accident? A Yes, he knows about it.

Q How would he know about it? What was his relationship to either where one accident occurred or the other or anything?

A No, he would just know about it from word of mouth. He wasn't in the field when it occurred.

Q Was he a helper? A No, he was an operator.

Q An operator? A Operator, and he made service specialist after this happened.

Q He wasn't present on the C.C. platform or (54) Chevron platform December 17, 1965 when you were first hurt? A Jim Tubbs, no.

Q And he wasn't on the job in Texas when you hurt your back? A Jim Tubbs, no, he never worked in Texas.

MR. WEST:

That's all I have.

... At the hour of 4:15
o'clock p.m., the taking of
the deposition was completed .

...

C E R T I F I C A T E

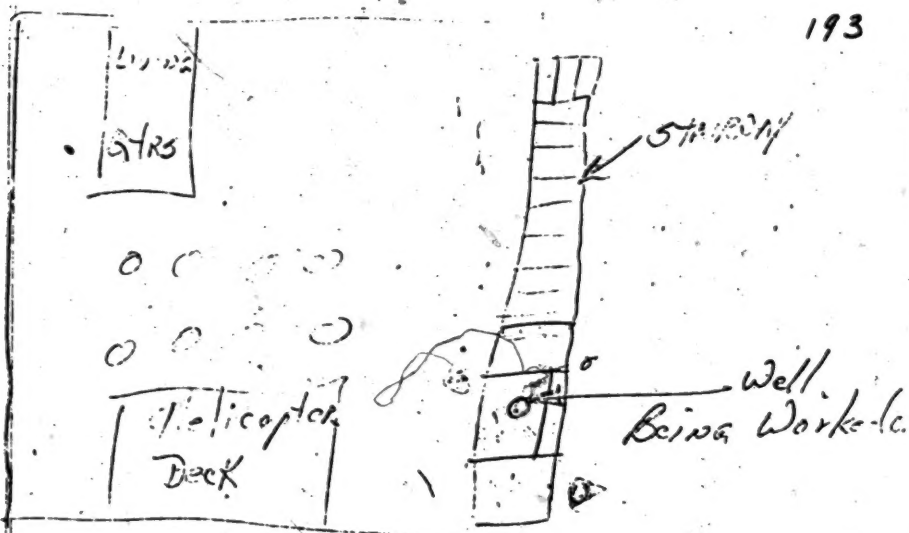
I, the undersigned, an Official Court Reporter in and for the State of Louisiana, authorized and empowered by law to administer oaths and to take the depositions of witnesses under L.R.S. 13:961.1, as amended, do hereby certify that the above and foregoing deposition is true and correct as taken by me in the above-entitled and -numbered cause(s).

I further certify that I am not of counsel nor related to any of the parties to this cause or in anywise interested in the event thereof.

NEW ORLEANS, LOUISIANA, on the 20th day
of September, 1968.

s/Charles A. Neyrey
Official Court Reporter

- - - - -



Thomson
Charles H. Hays a.c.

IN THE
United States Court of Appeals
FOR THE FIFTH CIRCUIT

No. 28448

GAINES TED HUSON,
Plaintiff-Appellant,
versus

CHEVRON OIL COMPANY,
Defendant-Appellee,
versus

OTIS ENGINEERING CORPORATION, ET AL.,
Third Party Defendant.

*Appeal from the United States District Court for the
Eastern District of Louisiana*

(July 14, 1970)

Before BROWN, Chief Judge, AINSWORTH and
GODBOLD, Circuit Judges.

BROWN, Chief Judge: This case is a fallout from
*Rodrique*¹ and the Outer Continental Shelf Lands Act.

¹*Rodrique v. Aetna Casualty & Surety Co.*, 1969, 395 U.S. 352, 89
S.Ct. 1835, 23 L.ed 360, — A.M.C. —.

2 G. T. HUSON v. CHEVRON OIL CO., ETC.

43 U.S.C.A. §1331, et seq. As a decision whose major thread in the quest for divination of legislative purpose was a conviction that Congress thought the interests of workers on the Outer Continental Shelf would be served best by adopting the law of the adjacent state as controlling federal law, the ink was scarcely dry when it became evident that the result might be quite something else. For against ingrained maritime principles of comparative fault, laches and the like, the Bar of Louisiana soon had to reckon with local restrictive, sometimes prohibitive principles of contributory negligence as a complete bar, peremptory limitations of short duration in death actions that extinguished the right,² prescriptive limitations of short duration in non-fatal injuries, and the peculiar vicarious substituted employer liability of the workmen's compensation statute that virtually extinguishes the now-common third party *Sieracki-Ryan-Yaka* seamen's suit.³

²See *Melja v. United States*, 5 Cir., 1946, 152 F.2d 686, 1946 A.M.C. 967; *Kenney v. Trinidad Corp.*, 5 Cir., 1965, 349 F.2d 832, 1965 A.M.C. 1659, cert. denied, 1966, 382 U.S. 1030, 86 S.Ct. 652, 15 L.ed.2d 542, — A.M.C. —

Although part of these problems may be ameliorated or eliminated by *Moragne v. State Marine Lines, Inc.*, 1970, — U.S. —, — S.Ct. —, — L.Ed.2d — [No. 175, June 15, 1970], if the death is "maritime", there are problems remaining when we deal with a *Rodrique* non-maritime death on a fixed platform.

³See *Gorsalitz v. Olin Matheson Chemical Corp.*, 5 Cir., 1970, — F.2d — [No. 27807, June —, 1970]. Also of recent vintage on the subject of an activity's being part of an employer's trade or business are *Cole v. Chevron Chem. Co.*, 5 Cir., 1970, — F.2d — [No. 29032, June 10, 1970] and *Arnold v. Shell Oil Co.*, 1969, 5 Cir., 419 F.2d 43, which interpret LSA-R.S. §23:1061.

"Where any person (in this section referred to as principal) undertakes to execute any work, which is a

G. T. HUSON v. CHEVRON OIL CO., ETC. 3

Any results so foreign to the *Rodrique* declared statutory purpose of improving the lot of adjacent-shore based workers should certainly be avoided unless the tide is overwhelming.

The problem here is not academic, but acute, for a case timely brought in January, 1968 was held by the District Court to be Louisiana time-barred by reason of the subsequent 1969 decision in *Rodrique*. As in *Continental Oil Co. v. London Steam-Ship Own. Mut. Ins. Ass'n.*,⁴ we decline to let literalisms produce unsound results. We reverse.

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part of his trade, business, or occupation or which he had contracted to perform, and contracts with any person (in this section referred to as contractor) for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, the principal shall be liable to pay to any employee employed in the execution of the work or to his dependent, any compensation under this Chapter which he would have been liable to pay if the employee had been immediately employed by him; and where compensation is claimed from, or proceedings are taken against, the principal, then, in the application of this Chapter reference to the principal shall be substituted for reference to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the employee under the employer by whom he is immediately employed.

"Where the principal is liable to pay compensation under this Section, he shall be entitled to indemnity from any person who independently of this Section would have been liable to pay compensation to the employee or his dependent, and shall have a cause of action therefor."

⁴*Continental Oil Co. v. London Steam-Ship Owners Mut. Ins. Ass'n.*, 5 Cir., 1969, 417 F.2d 1030, — A.M.C. —, cert. denied, 1970, — U.S. —, — S.Ct. —, 25 L.ed.2d 92, — A.M.C. —.

4 G. T. HUSON v. CHEVRON OIL CO., ETC.

• On December 17, 1965 Appellant Huson, while employed by the Otis Engineering Corporation, a service contractor, suffered injuries on a fixed oil rig platform in the Outer Continental Shelf off the coast of Louisiana. On January 4, 1968, he instituted this third party damage action against Appellee Chevron Oil Company, the owner and operator of the fixed structure. The suit was timely commenced for in *Snipes*⁵ we concluded as part of a sweeping declaration that for the Outer Continental Shelf, Congress had mandated⁶ federal

⁵Pure Oil Co. v. Snipes, 5 Cir., 1961, 293 F.2d 60, 1961 A.M.C. 1651.

⁶Section 1333 provides:

"(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State.

(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of August 7, 1953 are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf."

G. T. HUSON v. CHEVRON OIL CO., ETC. 15

maritime, not adjacent Louisiana parochial law. Thus the one year time limitation of Louisiana Art. 3536⁷ would not bar a suit⁸ for platform-based injuries if the claim passed muster under the maritime doctrine of laches. 293 F.2d at 70.

But all that is water over the dam because for platform-based occurrences,⁹ *Rodrigue* rejects maritime¹⁰

⁷Article 3536, LSA-C.C.:

"The following actions are also prescribed by one year: That for injurious words, whether verbal or written, and that for damages caused by animals; or resulting from offenses or quasi offenses. . . ."

See also Article 3537:

"The prescription mentioned in the preceding article runs: . . . from the day . . . on which the injurious words, disturbance or damage was sustained."

•On the maritime law approach our treatment of Art. 3536 was an *arguendo* assumption.

" . . . For if the occurrence is governed by Louisiana law, it is conceded that a suit filed 22 months after the injury . . . is prescribed by the Louisiana one-year statute. LSA C.C. Art. 3536. . . ." (emphasis added) 293 F.2d 60, 62. Cited in brief of Amicus, p. 3.

•Apparently disregarded in *Dore* (also disposed of in *Rodrigue*) was that the death was a maritime tort since the substance of decedent's injuries was consummated on the floating barge. See stipulation of parties in this Court's opinion:

"That the decedent was a crane operator working on a crane on a pedestal on a stationary platform; That the crane was being used to unload a barge or vessel located immediately next to the stationary platform; That while a load was being lifted from the vessel with an intention to place it on the stationary platform, the crane toppled over with the decedent in the crane and fell to the barge or vessel below, which was being unloaded and the decedent was killed when he fell on the barge."

Dore v. Link Belt Co., 1968, 5 Cir., 391 F.2d 671, 673, note 4.

See also *T. Smith & Sons v. Taylor*, 1928, 276 U.S. 179, 48

6 G. T. HUSON v. CHEVRON OIL CO., ETC.

in favor of local, adjacent "applicable and not inconsistent" law. "In light of the principles of traditional admiralty law, the Seas Act, and the Lands Act, we hold that petitioners' remedy is under the Lands Act and Louisiana law. The Lands Act makes it clear that federal law, supplemented by state law of the adjacent State, is to be applied to these artificial islands

S.Ct. 228, 72 L.Ed. 520, 1928 A.M.C. 447; *L'Hote v. Crowell*, 1932, 286 U.S. 528, 52 S.Ct. 499, 76 L.Ed. 1270, 1932 A.M.C. 1450.

10 For precedential buoyancy *Snipes*, *supra*, is probably way below her Plimsoll marks even though the Court's reference is an oblique footnote "cf" in note 9, 395 U.S. 363, — S.Ct. —, 23 L.Ed.2d 369.

It may be ironic, however, that in this third party situation of a suit by the employee of an independent service contractor against the owner-operator of the fixed platform rig, the rights *vis-a-vis* employee and employer (Otis) are fixed, not by the Louisiana Compensation Act, but by the Longshoremen's and Harbor Workers' Act 33 U.S.C.A. § 901, et seq. See 43 U.S.C.A. § 1333(c). This includes specifically the provisions relating to third party suits, 33 U.S.C.A. § 933, which are quite different from those under LSA-R.S. §23:1101 (See note 6, *Fidelity & Casualty v. C/B Mr. Kim*, 5 Cir., 1965, 345 F.2d 45, 49, 1965 A.M.C. 1944) which ties third party subrogation recovery to the employee's rights, unlike the broader basis under the Longshoremen's Act, see, e.g., *Federal Maritime Terminals, Inc. v. Burnside Shipping Co.*, 1969, 394 U.S. 404, 89 S.Ct. 1144, 22 L.Ed.2d 371; — A.M.C. — Appportionment of the burden of litigation and distribution of recoveries may also be different. See, e.g., *Strachan Shipping Co. v. Melvin*, 1964, 5 Cir., 327 F.2d 83, 1964 A.M.C. 288 (dissenting opinion); *Haynes v. Rederi A/S Aladdin*, 1966, 5 Cir., 362 F.2d 345, 350-51, — A.M.C. —, *cert. denied*, 1967, 385 U.S. 1020, 87 S.Ct. 731, 17 L.Ed.2d 557. Likewise, in the so-called Louisiana law third party suit the real "substantive" standards of conduct, performance, negligence, etc. will to a great extent be "federal" because of mandated Coast Guard Safety Regulations (43 U.S.C.A. § 1333(e) (1)) which have the force of federal law. See, e.g., *Manning v. M/V Sea Road*, 1969, 5 Cir., 417 F.2d 603, 1969 A.M.C. —

G. T. HUSON v. CHEVRON OIL CO., ETC. 7

as though they were federal enclaves in an upland State. This approach was deliberately taken in lieu of treating the structures as vessels, to which admiralty law supplemented by the law of the jurisdiction of the vessel's owner would apply. *The Hamilton*, 207 U.S. 398 (1907). This was done in part because men working on these islands are closely tied to the adjacent State, to which they often commute and on which their families live, unlike transitory seamen to whom a more generalized admiralty law is appropriate. Since the Seas Act does not apply of its own force under admiralty principles, and since the Lands Act deliberately eschewed the application of admiralty principles to these novel structures, Louisiana law is not ousted by the Seas Act, and under the Lands Act it is made applicable." *Rodrique*, *supra*, 395 U.S. at 355, ____ S.Ct. at ____, 23 L.Ed.2d at 364.

Several theories are advanced in refutation of the District Court's holding. Huson urges that on usual principles *Rodrique* should be applied prospectively and not retroactively. The Amicus contends that Art. 3536 is purely procedural, not a part of the substantive right, so that the federal forum is not bound by it. On argument, we suggested the *Continental Oil* approach that with federal resources being adequate the Louisiana law (Art. 3536) was not needed and hence was not "applicable". Persuasive as is the equitable appeal of non-retroactivity" we prefer to rest reversal on the other grounds.

"Application is most frequent in constitutional cases, not only criminal, see *Linkletter v. Walker*, 1965, 381 U.S. 618, 85 S.Ct. 1731, 14 L.Ed.2d 601 and *United States v. Lucia*, 5 Cir., 1969,

8 G. T. HUSON v. CHEVRON OIL CO., ETC.

In assaying Art. 3536, (note 7, *supra*) we emphasize two important factors. The first is the role of the federal Trial Court in an Outer Continental Shelf case. It is most certainly not just an *Erie* Court of the state in which it sits. Rather, it is the Court to which Congress committed primary, if not exclusive, jurisdiction for the enforcement of all federal laws including those adopted from the adjacent state.¹² It is a federal

416 F.2d 920, *aff'd en banc*, 1970, — F.2d — [No. 26316, March 30, 1970]; but civil as well. See *Cipriano v. City of Houma*, 1969, 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed.2d 647:

"Where a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity." 395 U.S. at 706, 89 S.Ct. at —, 23 L.Ed.2d at 652.

Cf. Miller v. Amusement Enterprises, Inc., 5 Cir., 1970, — F.2d — [No. 27529, May 13, 1970].

¹²See § 1333(b):

"Jurisdiction of United States district courts

(b) The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources of the subsoil and seabed of the outer Continental Shelf, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent State nearest the place where the cause of action arose."

And see § 1333(a) (3), *supra* note 6 which concludes:

"All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf."

This was a deliberate choice in rejecting the Amendment proposed by Senator Long of Louisiana "which would have

G. T. HUSON v. CHEVRON OIL CO., ETC. 9

Court adjudicating a federal case controlled by direct or adoptive federal law.

Second, we recognize that *Rodrique-Louisiana* substantive right begins with "the quaint codal language of Art. 2315".¹³ *C/B Mr. Kim, supra*. But unlike death actions for which Art. 2315 prescribes both the right and time, non-death rights created by Art. 2315 find their time restrictions in Art. 3536. Whether it is this verbal contiguity versus verbal separatism which leads to the result, it is nevertheless unquestioned Louisiana jurisprudence that for death actions the time is an integral part of the right. *Meija, Kenney, supra* note 2.

But not so for Art. 3536. "For we have held that Art. 3536 is a procedural restraint which bars the remedy, but does not extinguish the right. *Page v. Cameron Iron Works, Inc.*, 5 Cir., 1958, 259 F.2d 420, 422. It is also good Louisiana law, so we have held in an opinion written for the Court by Judge Wisdom that the codal '[A]rticle expresses the general rule, supported by

made 'the laws of each state applicable to the newly acquired area, and . . . the officials of such State [the agents empowered] to enforce the laws of the State in the newly acquired area.' " 395 U.S. at 359, — S.Ct. —, 23 L.Ed.2d at 366.

¹³LSA-C.C. art 2315.

"Every act whatever of man that causes damage to another, obliges him by whose fault it happened to repair it."

• • •

"The right to recover all other damages caused by an offense or quasi offense, if the injured person dies, shall survive for a period of one year from the death of the deceased • • •."

See *Grigsby v. Coastal Marine Service of Texas, Inc.*, 5 Cir., 1969, 412 F.2d 1011, 1023-29.

10 G. T. HUSON v. CHEVRON OIL CO., ETC.

ample Louisiana authority, that prescription is procedural and the law of the forum governs.' *Kozan v. Comstock*, 5 Cir., 1959, 270 F.2d 839, 841, 80 A.L.R.2d 310." *C/B Mr. Kim*, *supra*, 345 F.2d at 50.

In keeping with accepted conflicts principles, "purely procedural provisions may be overlooked". *Kenney*, *supra*, 349 F.2d at 836. In *Levinson v. Deupree*, 1953, 345 U.S. 648, 73 S.Ct. 914, 97 L.Ed. 1319, dealing with a claim in a federal Court in which state law was said to be applicable, the Supreme Court asserted that the federal Court must look to the local law to determine the scope of the rights. But the Court was not bound to go beyond that "to strive for uniformity of results in procedural niceties with the courts of jurisdiction which originated the obligato." 345 U.S. at 651, 97 L.Ed. at 1324, 73 S.Ct. at ____.

This carries out the legislative aim of (i) a body of substantive law (ii) to be administered by federal Courts as federal law. State law is called on as "applicable" where it is necessary to "fill federal voids" and where state law "supplemented gaps in the federal law". Where there is a federal "law" or procedural practice which adequately "cope[s] with the full range of potential legal problems"¹⁴ the state law — here prescription — is not applicable, for "the deliberate choice of federal law, federally administered, requires that 'applicable' be read in terms of necessity

¹⁴*Rodrique*, *supra*, 395 U.S. 357, 358, 89 S.Ct. at ____, 23 L.Ed.2d at 365.

G. T. HUSON v. CHEVRON OIL CO., ETC. 11

— necessity to fill a significant void or gap." *Continental Oil, supra*, 417 F.2d at 1036.

Here in rejecting the Louisiana period of limitations we recognize a federal Court in many situations applies the limitations period of the forum state when it acts as a "state" Court in an *Erie* sense. For this proposition Chevron cites *Wells v. Simonds Abrasive Co.*, 1953, 345 U.S. 514, 73 S.Ct. 856, 97 L.Ed. 1211; *Martin v. Texaco, Inc.*, 1968, E.D. La., 279 F. Supp. 1015, *inter alia*. And we recognize also that when applying a federal statute, if that statute does not itself set out a limitation period, we often adopt the periods of the states.

In *O'Sullivan v. Felix*, 1913, 233 U.S. 318, ____ S.Ct. ____, 58 L.Ed. 980, the Supreme Court set the stage by noting "That the action depends upon or arises under the laws of the United States does not preclude the application of the statute of limitations of the state is established beyond controversy * * *." This Court has applied this approach quite frequently in cases arising under the Civil Rights Act in which a federal Court borrows the applicable statute of limitations from the state in which it sits. *McGuire v. Baker*, 5 Cir., 1970, ____ F. 2d ____ [No. 27894, January 26, 1970]. See also *Beard v. Stephens*, 5 Cir., 1967, 372 F.2d 685.

Yet the state limitations have been rejected when a significant federal interest made them inappropriate. Never has this been more evident than in the maritime and quasi maritime area which is traditionally imbued with the laches doctrine and which presents a strong federal urge toward uniformity.

12 G. T. HUSON v. CHEVRON OIL CO., ETC.

Of course there can be no doubt about the procedural resources of the federal Court. Thus we rejected the state statute of limitations for the doctrine of laches on the analogy of Jones Act limitations, in *Flowers v. Savannah Machine & Foundry, Co.*, 5 Cir., 1962, 310 F. 2d 135, 1962 A.M.C. 2537; and the Supreme Court's adoption of the Jones Act period for federally recognized recovery for unseaworthiness. *McAllister v. Magnolia Petroleum Co.*, 1958, 357 U.S. 221, 78 S.Ct. 1201, 2 L.Ed. 2d 1272, 1958 A.M.C. 1754. To make certain that platform workers would not have fewer rights than their counterparts ashore, Congress sacrificed some uniformity. But consistent with that objective this broad legislative aim is served by eliminating disparities having nothing to do with substantive obligations but arising from the sheer accident of geographical location in, on, over or around the high seas. 43 U.S.C.A. § 1333 (b); *Atlantis Development Corp. v. United States*, 5 Cir., 1967, 379 F. 2d 818.¹⁵ Indeed, " * * * In actions arising at sea, frequently beyond the territorial bounds of any State, normal choices-of-law doctrines are likely to prove inadequate to the task of supplying certainty and predictability," *McAllister, supra*, 357 U.S. at 230, 78 S.Ct. at —, 2 L.Ed.2d at — (Brennan, J. concurring) for in the Fifth Circuit alone state statutes of limita-

¹⁵By rejecting state law here, we consider the real "interests sought to be served in the domestic intramural contest over the oil rich tidelands without disturbing interests of an international character having equal, if not greater importance in a day in which an incident on the High Seas may trigger a fissioned Armageddon." *Continental Oil, supra*, 417 F.2d at 1037.

G. T. HUSON v. CHEVRON OIL CO., ETC. 13.

tions range from one year in Louisiana to six years in Mississippi.¹⁰

We therefore reject Art. 3536 as a bar in this or similar cases. The doctrine of laches applies. Here, there being no question of adequate actual notice, complete lack of any prejudice, and a forthright failure to urge laches, *Delgado v. Malula*, 5 Cir., 1961, 291 F.2d 420, 1961 A.M.C. 1706, the suit was timely filed.

REVERSED AND REMANDED.

¹⁰ "However, slavish absorption of state limitations rules will certainly not achieve federal uniformity when we consider that, in the Fifth Circuit-Gulf Coast area alone, this would mean, injured offshore of Mississippi, the litigant would have six years to file suit; offshore of Texas, two years; Alabama, one year in injury cases and two years in death cases; Florida, four years in injury cases and two years in death cases."

Brief of Amicus, p. 12.

U.S. COURT OF APPEALS
FILED

SEP 14 '70

EDWARD M. WAJSMUTH
CLERK

Supreme Court of the United States

E. ROBERT BEAVER, CLERK

I, *Edmund M. Waismuth*, Clerk of the Supreme Court of the United States, do herebycertify that a petition for a writ of certiorari directed to the
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUITwas filed in the office of the Clerk of said Supreme Court on the eighth
day of September, A. D. 1970, in the case here entitled

CHEVRON OIL COMPANY,

Petitioner,

vs.

GAINES THE HUSBAND

and that the case has been docketed as No. 661, of the October Term,
1970, and is now pending.In testimony whereof I have subscribed
my name and affix the seal of said
Supreme Court, at the city of Wash-
ington, this tenth day
of September, A. D. 1970

E. Robert Beaver

Clerk of the Supreme Court of the United States

By

Michael Roden

Deputy

BEST AVAILABLE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

Number 661

CHEVRON OIL COMPANY,
Petitioner

versus

GAINES TED HUSON,
Respondent

DESIGNATION OF RECORD

Pursuant to the provisions of the Rules, Chevron Oil Company, petitioner, hereby designates for preparation of the record in the form of a Single Appendix, as follows:

- 1- Complaint by plaintiff.
- 2- Answer to the Complaint by Chevron Oil Company.
- 3- Interrogatories propounded to plaintiff by Chevron Oil Company.
- 4- Interrogatories propounded to Otis Engineering Corporation and Highlands Insurance Company by Chevron Oil Company.

- 5- Third-Party Complaint by Chevron Oil Company against Otis Engineering Corporation and Highlands Insurance Company.
- 6- Answer to Third-Party Complaint by Otis Engineering Corporation and Highlands Insurance Company.
- 7- Answers of plaintiff to Interrogatories propounded by Chevron Oil Company.
- 8- Answers of Otis Engineering Corporation to Interrogatories propounded by Chevron Oil Company.
- 9- Deposition of Mr. Forrest Bradham, November 5, 1968.
- 10- Deposition of Mr. Carmel Fesi, January 20, 1969.
- 11- Amended Answer to Third-Party Complaint by Otis Engineering Corporation and Highlands Insurance Company.
- 12- Minute Entry, March 24, 1969.
- 13- Motion to Dismiss and alternatively for Summary Judgment by Chevron Oil Company.
- 14- Deposition of Mr. George E. Jones, May 12, 1969.
- 15- Cross-Claim for Recovery of Compensation Benefits by Highlands Insurance Company against Mr. Gaines Ted Huson and Chevron Oil Company.

- 16- Answer by Chevron Oil Company to Cross-Claim of Highland Insurance Company.
- 17- Minute Entry, June 20, 1969.
- 18- Motion and Order that Pre-Trial Conference set for July 8, 1969 is continued for future assignment.
- 19- Motion and Order allowing plaintiff to file an Affidavit in opposition to Motion to Dismiss and/or for Summary Judgment.
- 20- Judgment, entered July 24, 1969.
- 21- Notice of Appeal, by plaintiff.
- 22- Deposition of Mr. Gaines Ted Huson, July 30, 1968.
- 23- Opinion, July 14, 1970, United States Court of Appeals, Fifth Circuit.
- 24- Certificate, September 8, 1970, Supreme Court of the United States.
- 25- Designation of Record.
- 26- Statement of the Issues.

New Orleans, Louisiana, May 18, 1971.

s/Lloyd C. Melancon
 MESSRS. McLOUGHLIN, BARRANGER,
 PROVOSTY AND MELANCON
 Counsel for Petitioner
 720 Hibernia Bank Building
 New Orleans 70112
 504-523-5116 Our LM0143

STATEMENT OF THE ISSUES

(Number and Title Omitted)

Pursuant to the provisions of the Rules, Chevron Oil Company, petitioner, hereby designates a statement of the issues which it intends to present for review, as follows:

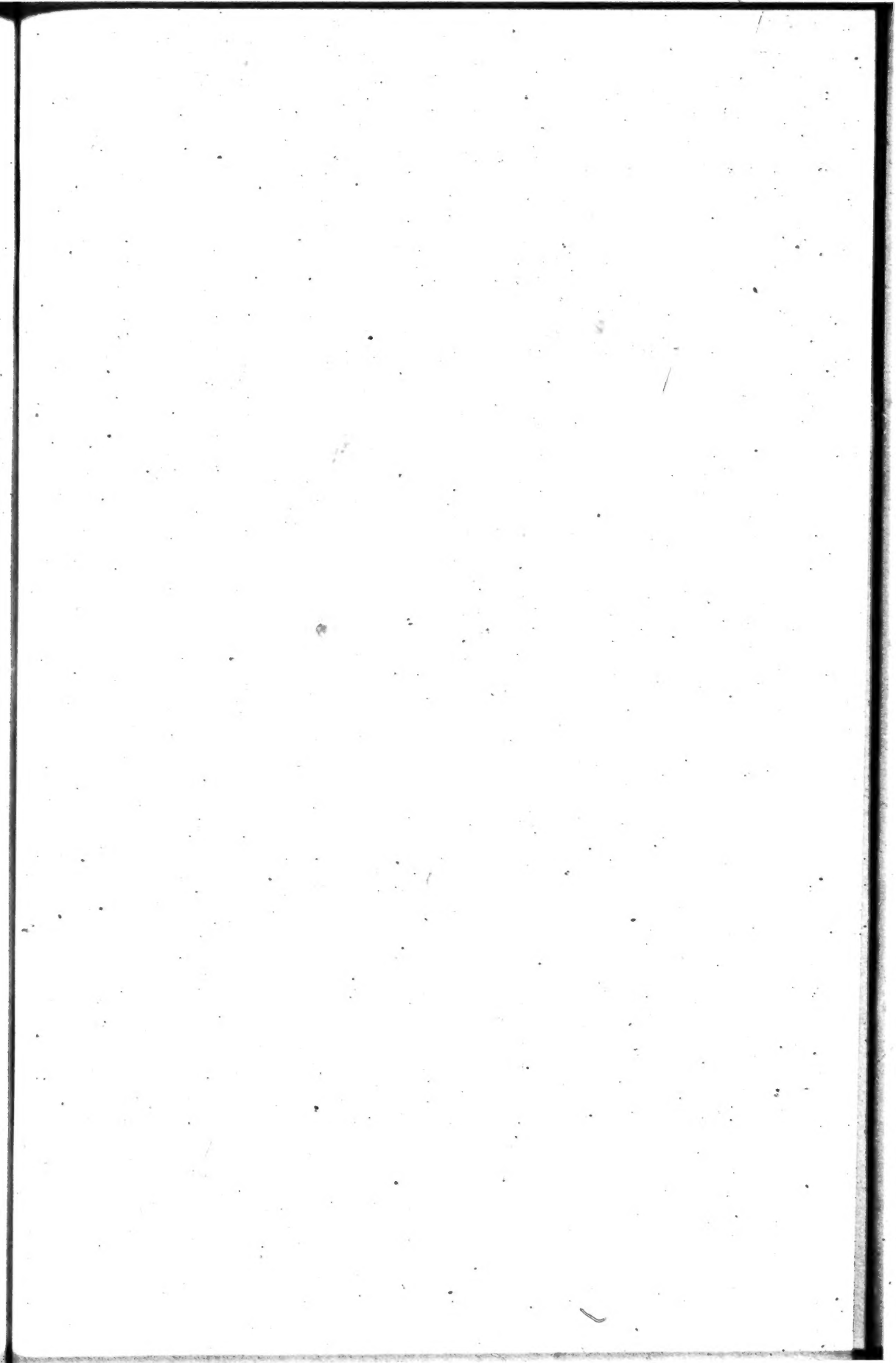
- 1- Whether the laws of the State of Louisiana (LSA-C.C. articles 2315 and 3536) are made applicable under the provisions of the Outer Continental Shelf Lands Act, U.S.C.A. Title 43, Sections 1331 et seq., to the alleged December 17, 1965 accident of respondent, Gaines Ted Huson, occurring on a fixed and immobile artificial island drilling structure located off the Louisiana coast, resulting in his personal injury and damages, but not death, thereon;
- 2- If the answer to the foregoing issue No. 1 is in the affirmative, whether LSA-C.C. article 3536 allowed respondent only one year, calculated from the date of the accident, within which to have filed his complaint for damages under the provisions of LSA-C.C. article 2315;
- 3- If the answer to the foregoing issue No. 1 is in the negative, whether the admiralty and general maritime law applies to the alleged December 17, 1965 accident of respondent, Gaines Ted Huson, occurring on a fixed and immobile artificial island drilling structure located off the Louisiana coast, resulting in his personal injury and damages, but not death, thereon; and,
- 4- If the answer to the foregoing issue No. 3 is in the affirmative, whether a

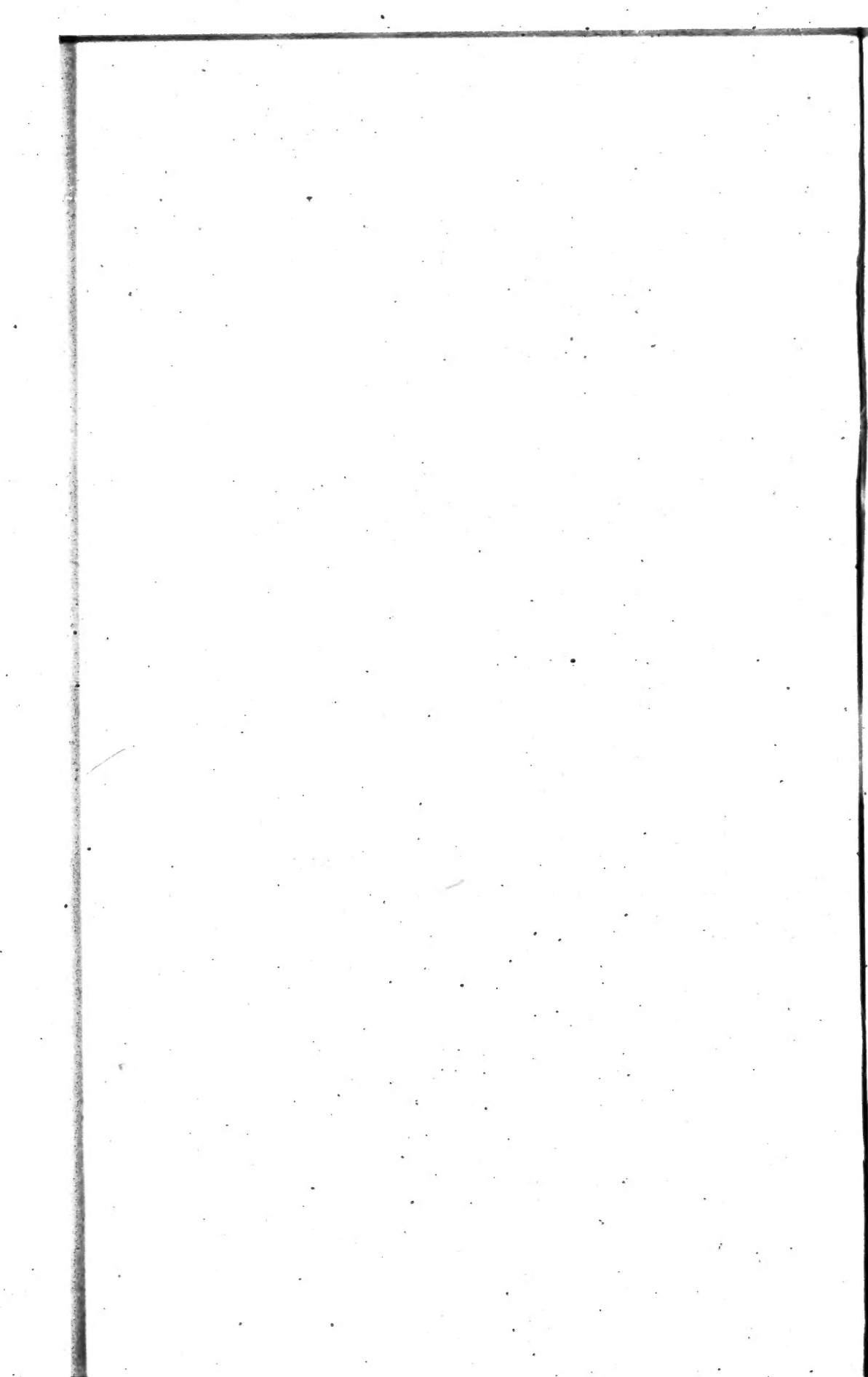
separate trial on the issue of laches is required in order for respondent to establish and show excusable delay in the filing of his complaint more than one year after the alleged accident and for petitioner to be allowed to prove prejudice as a result thereof.

New Orleans, Louisiana, May 18, 1971.

s/Lloyd C. Melancon
MESSRS. McLOUGHLIN, BARRANGER,
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Counsel for Petitioner
720 Hibernia Bank Building
New Orleans 70112
504-523-5116 Our LM0143

...oOo...





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Supreme Court, U.S.

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SEP 8 1970

E. ROBERT SEAYER, CLERK

Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~661~~

70-11

CHEVRON OIL COMPANY,

Petitioner,

versus

GAINES TED HUSON,

Respondent.

**Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit**

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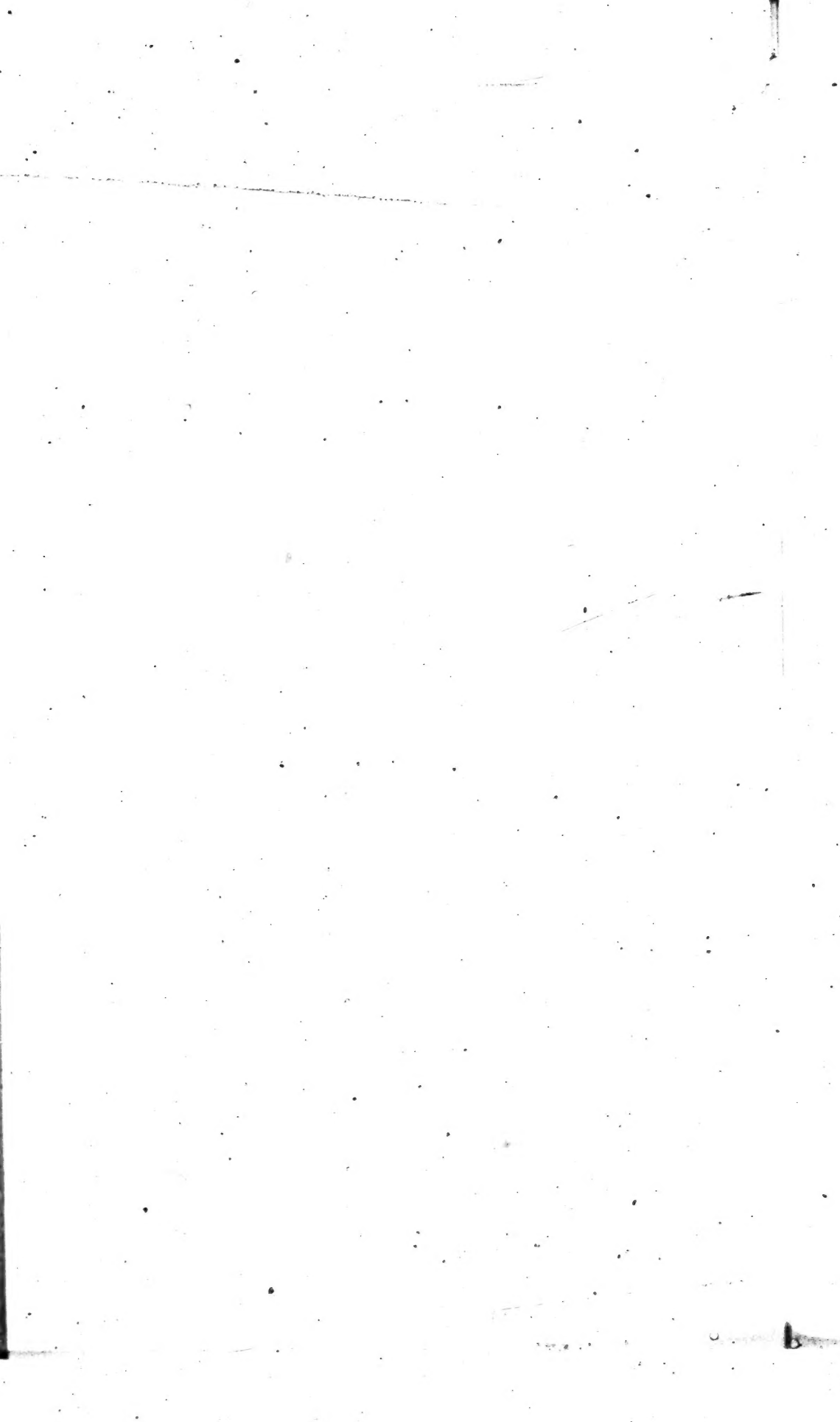
New Orleans, Louisiana 70112

504-523-5116

MESSRS. McLOUGHLIN, BARRANGER,

WEST, PROVOSTY AND MELANCON

Of Counsel



INDEX

	Page
Jurisdiction	2
Opinions Below	2
Questions Presented	2
Statute Involved	3
Statement	4
Specification of Errors Urged	5
Reasons Relied On For Granting The Writ	
1- The Court below has decided a question of law in conflict with an applicable decision of this Court and has departed so far from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.	6
2- The Court below has decided important questions of law which have not been, but should be, settled by this Court.	11
Conclusion	13
Proof of Service	14
Appendix	15

CASES CITED

<i>Ackerman versus McShane</i> , 43 La. Ann. 507 (1891) ..	10
<i>Adle, et al. versus Prudhomme</i> , 16 La. Ann. 343 (1861)	10
<i>Akers versus State Marine Lines, Inc.</i> , 344 F.2d 217 (1965)	13

II CASES (Continued)

	Page
<i>Arrington versus Grant Parish School Board</i> , 130 So.2d 443 (1961)	10
<i>Bounds versus T. L. James & Co.</i> , 124 F.Supp. 563 (1954)	8
<i>Brewster versus J. C. Byram & Co., Inc.</i> , 149 So. 118 (1933)	10
<i>Costello versus United States</i> , 365 U.S. 265 (1961)	13
<i>Delgado versus The Malula</i> , 291 F.2d 420 (1961) ..	12, 13
<i>Fidelity & Casualty Co. of N. Y. versus C/B Mr. Kim</i> , 345 F.2d 45 (1965)	13
<i>Gaston versus B. F. Walker, Inc.</i> , 400 F.2d 671 (1968)	8
<i>General Talking Pictures Corporation versus Western Electric Company, Inc., et al.</i> , 304 U.S. 175 (1937)	2
<i>Giddens versus Isbrandsten Co.</i> , 355 F.2d 125 (1966)	13
<i>Goett versus Union Carbide Corp.</i> , 361 U.S. 340 (1960)	2
<i>Goodwin versus Bodcaw Lumber Co.</i> , 109 La. 1050 (1902)	9
<i>Guillory versus Avoyelles Ry. Co.</i> , 104 La. 11 (1900) ..	8
<i>Lafarque versus Samuel</i> , 367 F.2d 396 (1966)	8
<i>McMurray versus Orleans Parish School Board</i> , 179 So. 834 (1938)	10
<i>Mejia versus U. S.</i> , 152 F.2d 686 (1946)	8, 9
<i>Oglesby versus Attrill</i> , 105 U.S. 605 (1882)	10

III CASES (Continued)

	Page
<i>Rodrigue, et al. versus Aetna Casualty and Surety Company, et al.</i> , 395 U.S. 352 (1969)	4, 7, 11, 12
<i>Russ versus Union Oil Company</i> , 113 La. 196 (1904)	10
<i>Tapp versus Guaranty Finance Co.</i> , 158 So.2d 228 (1964)	8
<i>The Tungus versus Skovgaard</i> , 358 U.S. 588 (1959)	2
<i>Thompson versus Gallien</i> , 127 F.2d 664 (1942)	9
<i>Vega versus The Malula</i> , 291 F.2d 415 (1961)	13

STATUTES

Code Napoleon of 1804	11
Civil Code of 1808	11
Civil Code of 1825	11
LSA - C.C. article 7	10
LSA-C.C. article 2315	2, 3, 4, 5, 8, 9, 11
LSA - C.C. article 3536	2, 3, 4, 5, 8, 9, 10, 11
Outer Continental Shelf Lands Act, U.S.C.A. Title 43, Sections 1331, et seq.	3, 5

MISCELLANEOUS

Black's Law Dictionary, Third Edition, page 1672 . . .	10
--------------------------------------------------------	----

APPENDIX

LSA-C.C. article 3536	15
LSA-C.C. article 2315	16

IV
APPENDIX (Continued)

	Page
Outer Continental Shelf Lands Act, U.S.C.A. Title 43, Section 1332(a)	17
Outer Continental Shelf Lands Act, U.S.C.A. Title 43, Section 1333(a) (1) (2) (3)	18
July 23, 1969 Judgment by the District Court of the United States, Eastern District of Louisiana, New Orleans Division, Civil Action No. 68-19D	20
July 14, 1970 Opinion by the United States Court of Appeals for the Fifth Circuit No. 28,448	23
July 14, 1970 Judgment by the United States Court of Appeals for the Fifth Circuit No. 28,448	36
August 10, 1970 Denial of Petition for Rehearing by United States Court of Appeals for the Fifth Circuit No. 28,448	38
August 25, 1970 stay of the issuance of the Mandate by United States Court of Appeals for the Fifth Circuit No. 28,448	39

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1970

No.

CHEVRON OIL COMPANY,
Petitioner,

versus

GAINES TED HUSON,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

TO THE HONORABLE THE CHIEF JUSTICE AND
THE ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE UNITED STATES:

Your petitioner, Chevron Oil Company, respectfully
prays that a writ of certiorari be issued out of and un-
der the seal of this Court to review the decision of the
United States Court of Appeals for the Fifth Circuit in
No. 28,448 rendered on July 14, 1970, which reversed
an earlier Judgment by the District Court of the United

States for the Eastern District of Louisiana, New Orleans Division, in Civil Action No. 68-19D, dismissing respondent's complaint.

JURISDICTION

Jurisdiction to review this case upon writ of certiorari is authorized and created by U.S.C.A. Title 28, Section 1254(1). See: *General Talking Pictures Corporation versus Western Electric Company, Inc., et al.*, 304 U.S. 175 (1937); *The Tungus versus Skovgaard*, 358 U.S. 588 (1959); and, *Goett versus Union Carbide Corp.*, 361 U.S. 340 (1960).

The opinion of the Court of Appeals for the Fifth Circuit was rendered July 14, 1970. A Petition for Rehearing was filed by petitioner on July 27, 1970 and denied August 10, 1970, without a further opinion. A motion was made to that Court for stay of mandate pending the filing of this petition for certiorari and granted on August 25, 1970.

OPINIONS BELOW

The Judgment of the District Court is printed in the Appendix; and, the opinion and denial of rehearing by the Court of Appeals for the Fifth Circuit are printed in the Appendix.

QUESTIONS PRESENTED

- 1- Whether the laws of the State of Louisiana (LSA-C.C. articles 2315 and 3536) are made applicable

under the provisions of the Outer Continental Shelf Lands Act, U.S.C.A. Title 43, Sections 1331 et seq., to an accident occurring on a fixed and immobile artificial island drilling structure located off the Louisiana coast, resulting in personal injury and damages, but not death, to an individual thereon.

2- If the answer to the foregoing question No. 1 is in the affirmative, whether LSA-C.C. article 3536 allows respondent only one year, calculated from the date of the accident, within which to file his complaint for damages under LSA-C.C. article 2315.

3- If the answer to the foregoing question No. 1 is in the negative, whether the admiralty and general maritime law applies to an accident occurring on a fixed and immobile artificial island drilling structure located off the Louisiana coast, resulting in personal injury and damages, but not death, to an individual thereon.

4- If the answer to the foregoing question No. 3 is in the affirmative, whether a separate trial on the issue of laches is required in order for respondent to establish and show excusable delay in the filing of his complaint more than one year after the alleged accident and for petitioner to be able to prove prejudice as a result thereof.

STATUTE INVOLVED

Pertinent provisions of the Outer Continental Shelf Lands Act, U.S.C.A. Title 43, Sections 1331 et seq., and

LSA-C.C. articles 2315 and 3536, are set forth in the Appendix.

STATEMENT

Respondent sued petitioner for personal injuries allegedly sustained on the latter's fixed and immobile artificial island drilling structure off the Louisiana coast, while in the course and scope of his employment by the independent contractor, Otis Engineering Corporation.

Upon completion of discovery and subsequent to the initial Pre-Trial Conference, a Motion for Summary Judgment was asserted by petitioner against respondent under the provisions of LSA-C.C. article 3536, on the grounds that any and all of his claims were perempted, prescribed and time-barred inasmuch as the complaint was filed more than 24 months after the date of the alleged accident. The District Court on July 23, 1969 granted a summary judgment to petitioner relying on *Rodrigue, et al. versus Aetna Casualty and Surety Company, et al.*, 395 U.S. 352 (1969), after which an appeal was taken by respondent to the United States Court of Appeals for the Fifth Circuit.

In reversing the District Court, the Appellate Court held in its July 14, 1970 opinion that notwithstanding the contrary holding in *Rodrigue*, supra, the admiralty and general maritime law doctrine of laches was applicable to the alleged accident of respondent occurring on petitioner's fixed and immobile artificial island drilling structure and remanded the case for a

trial on the merits. A petition for rehearing was timely filed, but promptly denied, without opinion, on August 10, 1970.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals for the Fifth Circuit erred and misdirected itself, as follows:

- 1- In holding that the laws of the State of Louisiana (LSA-C.C. articles 2315 and 3536) are not made applicable under the provisions of the Outer Continental Shelf Lands Act, U.S.C.A. Title 43, Sections 1331 et seq., to respondent's alleged accident occurring on petitioner's fixed and immobile artificial island drilling structure located off the Louisiana coast;
- 2- In failing to hold as a matter of law under the provisions of LSA-C.C. article 3536 that respondent's claims, filed more than 24 months after an alleged accident occurring on petitioner's fixed and immobile artificial island drilling structure off the Louisiana coast, were perempted, prescribed and time-barred;
- 3- In holding that the admiralty and general maritime law doctrine of laches was applicable to respondent's alleged accident on petitioner's fixed and immobile artificial island drilling structure; and,

- 4- In holding that as a matter of law petitioner was not entitled to a separate trial on the issue of laches in order for respondent to establish and show excusable delay in the untimely filing of his complaint and whether petitioner could prove prejudice as a result thereof.

REASONS RELIED ON FOR GRANTING THE WRIT

- 1- The Court below has decided a question of law in conflict with an applicable decision of this Court and has departed so far from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

It is undisputed and the evidence clearly established that at all times pertinent to the allegations of the complaint, respondent worked in the course and scope of his employment by and under the control, direction and supervision of the independent contractor, Otis Engineering Corporation, on petitioner's fixed and immobile artificial island drilling structure off the Louisiana coast. Moreover, the affirmative allegations of respondent in the complaint, which was filed January 4, 1968, clearly and unequivocally show that the cause of action, if any, arose out of a December 17, 1965 injury.

Because of these uncontroverted facts, the District Court properly dismissed the complaint inasmuch as there was no genuine issue as to any material fact and petitioner was entitled to summary judgment as a matter of law. This Court recently considered and re-

viewed the applicable laws to such "artificial island drilling rigs located on the outer Continental Shelf off the Louisiana coast," in *Rodrigue, et al. versus Aetna Casualty and Surety Company, et al.*, supra, and beginning at page 355, stated:

"In light of the principles of traditional admiralty law, the Seas Act, and the Lands Act, we hold that petitioners' remedy is under the Lands Act and Louisiana law. The Lands Act makes it clear that federal law, supplemented by state law of the adjacent State, is to be applied to these artificial islands as though they were federal enclaves in an upland State. This approach was deliberately taken in lieu of treating the structures as vessels, to which admiralty law supplemented by the law of the jurisdiction of the vessel's owner would apply. *The Hamilton*, 207 U.S. 398 (1907). This was done in part because men working on these islands are closely tied to the adjacent State, to which they often commute and on which their families live, unlike transitory seamen to whom a more generalized admiralty law is appropriate. Since the Seas Act does not apply of its own force under admiralty principles, and since the Lands Act deliberately eschewed the application of admiralty principles to these novel structures, *Louisiana law is not ousted by the Seas Act, and under the Lands Act it is made applicable.* (Emphasis added).

The purpose of the Outer Continental Shelf Lands Act was to define a body of law ap-

plicable to the seabed, the subsoil, and the fixed structures such as those in question here on the outer Continental Shelf. That this law was to be federal law and then only when not inconsistent with applicable federal law, is made clear by the language of the Act."

Accordingly, the substantive law of the State of Louisiana was applicable to respondent's claims arising out of his alleged injury on petitioner's fixed and immobile artificial island drilling structure. In this connection, LSA-C.C. article 3536 was controlling, as well as the provisions of LSA-C.C. article 2315, wherein the right to recover against a tort-feasor must be exercised by a claimant within one year.¹ Such limitation of action is a period of peremption² and the Supreme Court of Louisiana in *Guillory versus Avoyelles Ry. Co.*, 104 La. 11 (1900), on page 15, ruled:

"When a statute creates a right of action and stipulates a delay within which the right is to be executed, the delay thus fixed is not, properly speaking, one of prescription, but is one of peremption. Statutes of prescription simply bar the remedy. Statutes of peremption destroy the cause of action itself. That

¹*Bound versus T. L. James & Co.*, 124 F.Supp. 563 (1954); *Tapp versus Guaranty Finance Co.*, 158 So.2d 228 (1964); and, *Gaston versus B. F. Walker, Inc.*, 400 F.2d 671 (1968).

²*Mejia versus U.S.*, 152 F.2d 686 (1946); *Lafarque versus Samuel*, 367 F.2d 396 (1966); and, *Gaston versus B. F. Walker, Inc.*, 400 F.2d 671 (1968).

is to say, after the limit of time expires the cause of action no longer exists; it is lost."

In *Mejia*, supra, the United States Court of Appeals for the Fifth Circuit was called upon to interpret the application of LSA-C.C. articles 2315 and 3536 in a tort action. Therein, on page 688, it was held:

"The only statute in the state of Louisiana providing for damages for death is Article 2315 of the Civil Code of that state, as amended, which creates such rights, but which limits its life to the space of one year from the death.³ The one-year limit of Article 2315 is not in the nature of a limitation but is a peremption, and, unless the right created by the Article is exercised within the one-year period, it ceases to exist and is completely lost.⁴

³2315 (2294) (N 1382). Torts-Liability-Survival of action. — Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it; - - - - .

⁴*Goodwin versus Bodcaw Lumber Co.*, 109 La. 1050, 1066, 34 So. 74, 80; *Thompson versus Gallien*, 5th Cir., 127 F.2d 664."

Simply stated, respondent in his complaint untimely asserted and sought certain rights granted by LSA-C.C. article 2315, which was controlled by LSA-C.C.

article 3536. The question was simply whether or not he exercised his rights strictly in accordance with this law. He did not and his rights, if any, are now perempted, prescribed and time-barred.

In effect, respondent suggested that because of ignorance of the law, he should be excused for the delays and procrastination in asserting his rights. Of course, this is contrary to the jurisprudence of Louisiana wherein it is quite clear that such an error of law affords no relief.³ This is true even in the case where plaintiff engaged and relied upon the advices of his attorney.⁴

Historically, the substantive law of Louisiana has always allowed an injured party the period of one year within which to seek redress against an alleged tortfeasor. Black's Law Dictionary, Third Edition, on page 1672, describes substantive law, as follows:

"That part of the law which the Courts are established to administer, as opposed to the rules according to which the substantive law itself is administered. That part of the law

³LSA — C.C. article 7.

Oglesby versus Attrill, 105 U.S. 605 (1882); *Russ versus Union Oil Company*, 113 La. 196 (1904); *Brewster versus J. C. Byram & Co., Inc.*, 149 So. 118 (1933); *Adle, et al. versus Prudhomme*, 16 La. Ann. 343 (1861); and, *Ackerman versus McShane*, 43 La. Ann. 507 (1891).

⁴*McMurray versus Orleans Parish School Board*, 179 So. 834 (1938); and, *Arrington versus Grant Parish School Board*, 130 So.2d 443 (1961).

which creates, defines, and regulates rights, as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtaining redress for their invasion. —”.

In this connection, LSA-C.C. article 2315 dates back more than 150 years to the Civil Code of 1808 and to the Code Napoleon of 1804. Moreover, LSA-C.C. article 3536 in substance originated in the Civil Code of 1825 and neither were in any manner whatsoever affected nor changed by *Rodrigue*, supra. This then cannot be conscientiously urged as a “complete change in the law,” as suggested below by respondent.

2- The Court below has decided important questions of law which have not been, but should be, settled by this Court.

In *Rodrigue*, supra, this Court, on page 365, after a lengthy discussion about the inapplicability of the admiralty and general maritime law to this type of an artificial island drilling structure, unequivocally ruled:

“In view of all this, and the disclosure by Senator Cordon to the Senate upon introduction of the bill that the admiralty or maritime approach of the original bill had been abandoned, it is apparent that the Congress decided that these artificial islands, though surrounded by the high seas, were not themselves to be considered within maritime jurisdiction. Thus the admiralty action under the Seas Act no more applies to these accidents

actually occurring on the islands than it would to accidents occurring in an upland federal enclave or on a natural island to which admiralty jurisdiction had not been specifically extended. At a minimum, the legislative history shows that accidents on these structures, which under maritime principles would be no more under maritime jurisdiction than accidents on a wharf located above navigable waters, were not changed in character by the Lands Act."

The Appellate Court below clearly erred in failing to apply this clearly defined principle of law. Otherwise, as a result of the erroneous July 14, 1970 opinion, two separate laws are applicable in accidents occurring on fixed and immobile artificial island drilling structures. If the occurrence results in death to an individual, under the holding in *Rodrigue*, supra, the provisions of the laws of Louisiana are available; but, if only personal injuries are involved, then the admiralty and general maritime law shall control.

The Appellate Court below further erred in the conclusion contained in the July 14, 1970 opinion on page 13 wherein it was held:

— "The doctrine of laches applies. Here, there being no question of adequate actual notice, complete lack of any prejudice, and a forthright failure to urge laches, *Delgado v. Ma-*

lula, 5 Cir., 1961, 291 F.2d 420, 1961 A.M.C. 1706, the suit was timely filed."

In the District Court, the only issue presented and resolved by the Judgment was that of prescription and peremption under the laws of Louisiana. The issue as to the possible application of the doctrine of laches under the admiralty and general maritime law was not argued or for that matter even presented, and a separate trial is required thereon. *Costello versus United States*, 365 U.S. 265 (1961); *Vega versus The Malula*, 291 F.2d 415 (1961); *Delgado versus The Malula*, 291 F.2d 420 (1961); *Fidelity & Casualty Co. of N.Y. versus C/B Mr. Kim*, 345 F.2d 45 (1965); *Akers versus State Marine Lines, Inc.*, 344 F.2d 217 (1965); and, *Giddens versus Isbrandsten Co.*, 355 F.2d 125 (1966). Obviously, if the admiralty and general maritime law is ultimately held to be controlling, petitioner is entitled to its day in Court on this issue and respondent must establish and show excusable neglect in failing to file his cause of action within the one-year period; and, whether petitioner can prove to have been prejudiced thereby.

CONCLUSION

It is respectfully submitted that a writ of certiorari should be granted, that the decision of the United States Court of Appeals for the Fifth Circuit in No. 28,448 should be reversed and that the judgment of the District Court of the United States, Eastern District of

Louisiana, New Orleans Division, Civil Action No. 68-19D, should be reinstated.

New Orleans, Louisiana, September 4, 1970.

(SIGNED) LLOYD C. MELANCON

Counsel for Petitioner

MESSRS. McLOUGHLIN, BARRANGER,
WEST, PROVOSTY AND MELANCON
Of Counsel

PROOF OF SERVICE

In furtherance of the Rules, I have served three copies of the above and foregoing petition for writ of certiorari upon all parties, by prepaid mail addressed to their counsel this 4th day of September, 1970.

(SIGNED) LLOYD C. MELANCON

APPENDIX**LSA-C.C. article 3536**

The following actions are also prescribed by one year:

That for injurious words, whether verbal or written, and that for damages caused by animals, or resulting from offenses or quasi offenses.

That which a possessor may institute, to have himself maintained or restored to his possession, when he has been disturbed or evicted.

That for the delivery of merchandise or other effects, shipped on board any kind of vessels.

That for damage sustained by merchandise on board ships, or which may have happened by ships running foul of each other.

LSA-C.C. article 2315

Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.

The right to recover damages to property caused by an offense or quasi offense is a property right which, on the death of the obligee, is inherited by his legal, instituted, or irregular heirs, subject to the community rights of the surviving spouse.

The right to recover all other damages caused by an offense or quasi offense, if the injured person dies, shall survive for a period of one year from the death of the deceased in favor of: (1) the surviving spouse and child or children of the deceased, or either such spouse or such child or children; (2) the surviving father and mother of the deceased, or either of them, if he left no spouse or child surviving, and (3) the surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving. The survivors in whose favor this right of action survives may also recover the damages which they sustained through the wrongful death of the deceased. A right to recover damages under the provisions of this paragraph is a property right which, on the death of the survivor in whose favor the right of action survived, is inherited by his legal, instituted, or irregular heirs, whether suit has been instituted thereon by the survivor or not.

As used in this article, the words "child", "brother", "sister", "father", and "mother" include a child, brother, sister, father, and mother, by adoption, respectively.

U.S.C.A. Title 43, Section 1332

“(a) It is declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter.”

U.S.C.A. Title 43, Section 1333

"(a) Constitution and United States laws; laws of adjacent States; publication of projected State lines; restriction on State taxation and jurisdiction.

"(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

"(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of the effective date of this subchapter are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable

laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

"(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom."

JUDGMENT

Filed: Jul. 23, 1969

IN THE
DISTRICT COURT OF THE UNITED STATES
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

GAINES TED HUDSON,

Plaintiff,

CIVIL ACTION

versus

No. 68-19

SECTION D

CHEVRON OIL COMPANY,

Defendant.

The Motion for Summary Judgment asserted by Chevron Oil Company against the Complaint of plaintiff Mr. Gaines Ted Hudson having been heard before me in the regular course of proceedings and considering the briefs of counsel, depositions, evidence, exhibits, affidavits, interrogatories, pleadings and the entire record, and after due deliberation thereon, I conclude and find that plaintiff filed his Complaint in the above-entitled and numbered Civil Action on January 4, 1968, and alleged therein a December 17, 1965 accident. Accordingly, more than one year has elapsed between the date of the alleged accident and the filing of the Complaint, which under the June 9, 1969 ruling by the Supreme Court in *Rodrigue, et al. versus Aetna Casualty & Surety Company, et al.*, Num-

ber 436 - October Term 1968, plaintiff's action is now prescribed (time-barred) pursuant to the provisions of LSA - C.C. art. 3536. Therefore, in accordance with these findings of facts and conclusions of law,

IT IS ORDERED, ADJUDGED AND DECREED that defendant Chevron Oil Company have judgment on its Motion, and the Complaint of plaintiff Mr. Gaines Ted Huson filed against Chevron Oil Company in the above-entitled and numbered Civil Action be and it is hereby dismissed; and,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there exists no just reason for delay and the Clerk is hereby directed to enter a final Judgment hereon, adjudicating fewer than all of the claims asserted in the above-entitled and numbered Civil Action, all in accordance with the provisions of Rules 54(b) and 58 of the Rules of Civil Procedure.

Read, rendered and signed in open Court in New Orleans, Louisiana this 23rd day of July, 1969.

(Signed) EDWARD BOYLE, JR.
DISTRICT JUDGE

Submitted:

(Signed) SAMUEL C. GAINSBURGH
MESSRS. KIERR AND GAINSBURGH
Counsel for Plaintiff

(Signed) LLOYD C. MELANCON
MESSRS. McLOUGHLIN, BARRANGER,
WEST, PROVOSTY AND MELANCON
Counsel for Chevron Oil Company

(Signed) BLAKE WEST
MESSRS. PHELPS, DUNBAR, MARKS,
CLAVERIE AND SIMS
Counsel for Otis Engineering Corporation and
Highlands Insurance Company

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 28448

GAINES TED HUSON,,
Plaintiff-Appellant,

versus

CHEVRON OIL COMPANY,
Defendant-Appellee,

versus

OTIS ENGINEERING CORPORATION, ET AL.,
Third Party Defendant.

Appeal from the United States District Court for the
Eastern District of Louisiana

(July 14, 1970)

Before BROWN, Chief Judge, AINSWORTH and
GODBOLD, Circuit Judges.

BROWN, Chief Judge: This case is a fallout from
*Rodrique*¹ and the Outer Continental Shelf Lands Act.

¹*Rodrigue v. Aetna Casualty & Surety Co.*, 1969, 395 U.S. 352, 89
S.Ct. 1835, 23 L.ed 360, — A.M.C. —.

43 U.S.S.A. §1331, et seq. As a decision whose major thread in the quest for divination of legislative purpose was a conviction that Congress thought the interests of workers on the Outer Continental Shelf would be served best by adopting the law of the adjacent state as controlling federal law, the ink was scarcely dry when it became evident that the result might be quite something else. For against ingrained maritime principles of comparative fault, laches and the like, the Bar of Louisiana soon had to reckon with local restrictive, sometimes prohibitive principles of contributory negligence as a complete bar, peremptory limitations of short duration in death actions that extinguished the right,² prescriptive limitations of short duration in non-fatal injuries, and the peculiar vicarious substituted employer liability of the workmen's compensation statute that virtually extinguishes the now-common third party *Sieracki-Ryan-Yaka* seamen's suit.³

²See *Meija v. United States*, 5 Cir., 1946, 152 F.2d 686, 1946 A.M.C. 967; *Kenney v. Trinidad Corp.*, 5 Cir., 1965, 349 F.2d 832, 1965 A.M.C. 1659, cert. denied, 1966, 382 U.S. 1030, 86 S.Ct. 652, 15 L.ed.2d 542, ____ A.M.C. ____.

Although part of these problems may be ameliorated or eliminated by *Moragne v. States Marine Lines, Inc.*, 1970, ____ U.S. ____, ____ S.Ct. ____, ____ L.Ed.2d ____ [No. 175, June 15, 1970], if the death is "maritime", there are problems remaining when we deal with a *Rodrique* non-maritime death on a fixed platform:

³See *Gorsalitz v. Olin Matheson Chemical Corp.*, 5 Cir., 1970, ____ F.2d ____ [No. 27807, June __, 1970]. Also of recent vintage on the subject of an activity's being part of an employer's trade or business are *Cole v. Chevron Chem. Co.*, 5 Cir., 1970, ____ F.2d ____ [No. 29032, June 10, 1970] and *Arnold v. Shell Oil Co.*, 1969, 5 Cir., 419 F.2d 43, which interpret LSA-R.S. §23:1061.

"Where any person (in this section referred to as principal) undertakes to execute any work, which is a

Any results so foreign to the *Rodrique* declared statutory purpose of improving the lot of adjacent-shore based workers should certainly be avoided unless the tide is overwhelming.

The problem here is not academic, but acute, for a case timely brought in January, 1968 was held by the District Court to be Louisiana time-barred by reason of the subsequent 1969 decision in *Rodrique*. As in *Continental Oil Co. v. London Steam-Ship Own. Mut. Ins. Ass'n.*,⁴ we decline to let literalisms produce unsound results. We reverse.

part of his trade, business, or occupation or which he had contracted to perform, and contracts with any person (in this section referred to as contractor) for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, the principal shall be liable to pay to any employee employed in the execution of the work or to his dependent, any compensation under this Chapter which he would have been liable to pay if the employee had been immediately employed by him; and where compensation is claimed from, or proceedings are taken against, the principal, then, in the application of this Chapter reference to the principal shall be substituted for reference to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the employee under the employer by whom he is immediately employed.

"Where the principal is liable to pay compensation under this Section, he shall be entitled to indemnity from any person who independently of this Section would have been liable to pay compensation to the employee or his dependent, and shall have a cause of action therefor."

⁴*Continental Oil Co. v. London Steam-Ship Owners Mut. Ins. Ass'n.*, 5 Cir., 1969, 417 F.2d 1030, ____ A.M.C. ____, cert. denied, 1970, ____ U.S. ____, ____ S.Ct. ____, 25 L.ed.2d 92, ____ A.M.C. ____.

On December 17, 1965 Appellant Huson, while employed by the Otis Engineering Corporation, a service contractor, suffered injuries on a fixed oil rig platform in the Outer Continental Shelf off the coast of Louisiana. On January 4, 1968, he instituted this third party damage action against Appellee Chevron Oil Company, the owner and operator of the fixed structure. The suit was timely commenced for in *Snipes*⁵ we concluded as part of a sweeping declaration that for the Outer Continental Shelf, Congress had mandated⁶ federal

⁵*Pure Oil Co. v. Snipes*, 5 Cir., 1961, 293 F.2d 60, 1961 A.M.C. 1651.

⁶Section 1333 provides:

"(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State.

(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of August 7, 1953 are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf."

maritime, not adjacent Louisiana parochial law. Thus the one year time limitation of Louisiana Art. 3536⁷ would not bar a suit⁸ for platform-based injuries if the claim passed muster under the maritime doctrine of laches. 293 F.2d at 70.

But all that is water over the dam because for platform-based occurrences,⁹ *Rodrique* rejects maritime¹⁰

⁷Article 3536, LSA-C.C.:

"The following actions are also prescribed by one year: That for injurious words, whether verbal or written, and that for damages caused by animals, or resulting from offenses or quasi offenses. * * *

See also Article 3537:

"The prescription mentioned in the preceding article runs * * * from the day * * * on which the injurious words, disturbance or damage was sustained."

⁸On the maritime law approach our treatment of Art. 3536 was an *arguendo* assumption.

"* * * For if the occurrence is governed by Louisiana law, it is *conceded* that a suit filed 22 months after the injury . . . is prescribed by the Louisiana one-year statute. LSA C.C. Art. 3536. * * *" (emphasis added)

293 F.2d 60, 62. Cited in brief of Amicus, p. 3.

⁹Apparently disregarded in *Dore* (also disposed of in *Rodrique*) was that the death was a maritime tort since the substance of decedent's injuries was consummated on the floating barge. See stipulation of parties in this Court's opinion:

"That the decedent was a crane operator working on a crane on a pedestal on a stationary platform; That the crane was being used to unload a barge or vessel located immediately next to the stationary platform; That while a load was being lifted from the vessel with an intention to place it on the stationary platform, the crane toppled over with the decedent in the crane and fell to the barge or vessel below, which was being unloaded and the decedent was killed when he fell on the barge."

Dore v. Link Belt Co., 1968, 5 Cir., 391 F.2d 671, 673, note 4.

See also *T. Smith & Sons v. Taylor*, 1928 276 U.S. 179, 48

in favor of local, adjacent "applicable and not inconsistent" law. "In light of the principles of traditional admiralty law, the Seas Act, and the Lands Act, we hold that petitioners' remedy is under the Lands Act and Louisiana law. The Lands Act makes it clear that federal law, supplemented by state law of the adjacent State, is to be applied to these artificial islands

S.Ct. 228, 72 L.Ed. 520, 1928 A.M.C. 447; *L'Hote v. Crowell*, 1932, 286 U.S. 528, 52 S.Ct. 499, 76 L.Ed. 1270, 1932 A.M.C. 1450.

¹⁰For precedential buoyancy *Snipes*, *supra*, is probably way below her *Plimsoll* marks even though the Court's reference is an oblique footnote "*et*" in note 9, 395 U.S. 363, ____ S.Ct. ____, 23 L.Ed.2d 369.

It may be ironic, however, that in this third party situation of a suit by the employee of an independent service contractor against the owner-operator of the fixed platform rig, the rights *vis-a-vis* employee and employer (Otis) are fixed, not by the Louisiana Compensation Act, but by the Longshoremen's and Harbor Workers' Act 33 U.S.C.A. § 901, et seq. See 43 U.S.C.A. § 1333(c). This includes specifically the provisions relating to third party suits, 33 U.S.C.A. § 933, which are quite different from those under LSA-R.S. §23:1101 (See note 6; *Fidelity & Casualty v. C/B Mr. Kim*, 5 Cir., 1965, 345 F.2d 45, 49, 1965 A.M.C. 1944) which ties third party subrogation recovery to the employee's rights, unlike the broader basis under the Longshoremen's Act, see, e.g., *Federal Maritime Terminals, Inc. v. Burnside Shipping Co.*, 1969, 394 U.S. 404, 89 S.Ct. 1144, 22 L.Ed.2d 371, ____ A.M.C. ____ Appportionment of the burden of litigation and distribution of recoveries may also be different. See, e.g., *Strachan Shipping Co. v. Melvin*, 1964, 5 Cir., 327 F.2d 83, 1964 A.M.C. 288 (dissenting opinion); *Haynes v. Rederi A/S Aladdin*, 1966, 5 Cir., 362 F.2d 345, 350-51, ____ A.M.C. ____, *cert. denied*, 1967, 385 U.S. 1020, 87 S.Ct. 731, 17 L.Ed.2d 557. Likewise, in the so-called Louisiana law third party suit the real "substantive" standards of conduct, performance, negligence, etc. will to a great extent be "federal" because of mandated Coast Guard Safety Regulations (43 U.S.C.A. § 1333(e) (1)) which have the force of federal law. See, e.g., *Manning v. M/V Sea Road*, 1969, 5 Cir., 417 F.2d 603, 1969 A.M.C. ____.

as though they were federal enclaves in an upland State. This approach was deliberately taken in lieu of treating the structures as vessels, to which admiralty law supplemented by the law of the jurisdiction of the vessel's owner would apply. *The Hamilton*, 207 U.S. 398 (1907). This was done in part because men working on these islands are closely tied to the adjacent State, to which they often commute and on which their families live, unlike transitory seamen to whom a more generalized admiralty law is appropriate. Since the Seas Act does not apply of its own force under admiralty principles, and since the Lands Act deliberately eschewed the application of admiralty principles to these novel structures, Louisiana law is not ousted by the Seas Act, and under the Lands Act it is made applicable." *Rodrique*, *supra*, 395 U.S. at 355, ____ S.Ct. at ____, 23 L.Ed.2d at 364.

Several theories are advanced in refutation of the District Court's holding. Huson urges that on usual principles *Rodrique* should be applied prospectively and is purely procedural, not a part of the substantive right, so that the federal forum is not bound by it. On argument, we suggested the *Continental Oil* approach that with federal resources being adequate the Louisiana law (Art. 3536) was not needed and hence was not "applicable". Persuasive as is the equitable appeal of non-retroactivity¹¹ we prefer to rest reversal on the other grounds.

¹¹Application is most frequent in constitutional cases, not only criminal, see *Linkletter v. Walker*, 1965, 381 U.S. 618, 85 S.Ct. 1731, 14 L.Ed.2d 601 and *United States v. Lucia*, 5 Cir., 1969,

In assaying Art. 3536, (note 7, *supra*) we emphasize two important factors. The first is the role of the federal Trial Court in an Outer Continental Shelf case. It is most certainly not just an *Erie* Court of the state in which it sits. Rather, it is the Court to which Congress committed primary, if not exclusive, jurisdiction for the enforcement of all federal laws including those adopted from the adjacent state.¹² It is a federal

416 F.2d 920, *aff'd en banc*, 1970, — F.2d — [No. 26316, March 30, 1970]; but civil as well. See *Cipriano v. City of Houma*, 1969, 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed.2d 647:

"Where a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding a nonretroactivity." 395 U.S. at 706, 89 S.Ct. at —, 23 L.Ed.2d at 652.

Cf. Miller v. Amusement Enterprises, Inc., 5 Cir., 1970, —

¹²See § 1333(b):

"Jurisdiction of United States district courts

(b) The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources of the subsoil and seabed of the outer Continental Shelf, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent State nearest the place where the cause of action arose."

And see § 1333(a) (2), *supra* note 6 which concludes:

"All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf."

This was a deliberate choice in rejecting the Amendment proposed by Senator Long of Louisiana "which would have

Court adjudicating a federal case controlled by direct or adoptive federal law.

Second, we recognize that *Rodrique*-Louisiana substantive right begins with "the quaint codal language of Art. 2315".¹³ *C/B Mr. Kim, supra*. But unlike death actions for which Art. 2315 prescribes both the right and time, non-death rights created by Art. 2315 find their time restrictions in Art. 3536. Whether it is this verbal contiguity versus verbal separatism which leads to the result it is nevertheless unquestioned Louisiana jurisprudence that for death actions the time is an integral part of the right. *Meija, Kenney, supra* note 2.

But not so for Art. 3536. "For we have held that Art. 3536 is a procedural restraint which bars the remedy, but does not extinguish the right. *Page v. Cameron Iron Works, Inc.*, 5 Cir., 1958, 259 F.2d 420, 422. It is also good Louisiana law, so we have held in an opinion written for the Court by Judge Wisdom that the codal '[A]rticle expresses the general rule, supported by

made 'the laws of each state applicable to the newly acquired area, and... the officials of such State [the agents empowered] to enforce the laws of the State in the newly acquired area.'" 395 U.S. at 359, —, S.Ct. —, 23 L.Ed.2d at 366.

¹³LSA-C.C. art 2315.

"Every act whatever of man that causes damage to another, obliges him by whose fault it happened to repair it."

"The right to recover all other damages caused by an offense or quasi offense, if the injured person dies, shall survive for a period of one year from the death of the deceased ***"

See *Grigsby v. Coastal Marine Service of Texas, Inc.*, 5 Cir., 1969, 412 F.2d 1011, 1023-29.

ample Louisiana authority, that prescription is procedural and the law of the forum governs.' *Kozan v. Comstock*, 5 Cir., 1959, 270 F.2d 839, 841, 80 A.L.R.2d 310." *C/R Mr. Kim*, *supra*, 345 F.2d at 50.

In keeping with accepted conflicts principles, "purely procedural provisions may be overlooked". *Kenney supra*, 349 F.2d at 836. In *Levinson v. Deupree*, 1953, 345 U.S. 648, 73 S.Ct. 914, 97 L.Ed. 1319, dealing with a claim in a federal Court in which state law was said to be applicable, the Supreme Court asserted that the federal Court must look to the local law to determine the scope of the rights. But the Court was not bound to go beyond that "to strive for uniformity of results in procedural niceties with the courts of jurisdiction which originated the obligato." 345 U.S. at 651, 97 L.Ed. at 1324, 73 S.Ct. at ____.

This carries out the legislative aim of (i) a body of substantive law (ii) to be administered by federal Courts as federal law. State law is called on as "applicable" where it is necessary to "fill federal voids" and where state law "supplemented gaps in the federal law". Where there is a federal "law" or procedural practice which adequately "cope[s] with the full range of potential legal problems"¹⁴ the state law — here prescription — is not applicable, for "the deliberate choice of federal law, federally administered, requires that 'applicable' be read in terms of necessity

¹⁴*Rodrique*, *supra*, 395 U.S. 357, 358, 89 S.Ct. at ____, 23 L.Ed.2d at 365.

—necessity to fill a significant void or gap.” *Continental Oil*; *supra*, 417 F.2d at 1036.

Here in rejecting the Louisiana period of limitations we recognize a federal Court in many situations applies the limitations period of the forum state when it acts as a “state” Court in an *Erie* sense. For this proposition *Chevron* cites *Wells v. Simonds Abrasive Co.*, 1953, 345 U.S. 514, 73 S.Ct. 856, 97 L.Ed. 1211; *Martin v. Texaco, Inc.*, 1968, E.D. La., 279 F. Supp. 1015, *inter alia*. And we recognize also that when applying a federal statute, if that statute does not itself set out a limitation period, we often adopt the periods of the states.

In *O’Sullivan v. Felix*, 1913, 233 U.S. 318, ____ S.Ct. ____, 58 L.Ed. 980, the Supreme Court set the stage by noting “That the action depends upon or arises under the laws of the United States does not preclude the application of the statute of limitations of the state is established beyond controversy * * *.” This Court has applied this approach quite frequently in cases arising under the Civil Rights Act in which a federal Court borrows the applicable statute of limitations from the state in which it sits. *McGuire v. Baker*, 5 Cir., 1970, ____ F.2d ____ [No. 27894, January 26, 1970]. See also *Beard v. Stephens*, 5 Cir., 1967, 372 F.ed 685.

Yet the state limitations have been rejected when a significant federal interest made them inappropriate. Never has this been more evident than in the maritime and quasi maritime area which is traditionally imbued with the laches doctrine and which presents a strong federal urge toward uniformity.

Of course there can be no doubt about the procedural resources of the federal Court. Thus we rejected the state statute of limitations for the doctrine of laches on the analogy of Jones Act limitations, in *Flowers v. Savannah Machine & Foundry, Co.*, 5 Cir., 1962, 310 F. 2d 135, 1962, A.M.C. 2537; and the Supreme Court's adoption of the Jones Act period for federally recognized recovery for unseaworthiness. *McAllister v. Magnolia Petroleum Co.*, 1958, 357 U.S. 221, 78 S.Ct. 1201, 2 L.Ed. 2d 1272, 1958 A.M.C. 1754. To make certain that platform workers would not have fewer rights than their counterparts ashore, Congress sacrificed some uniformity. But consistent with that objective this broad legislative aim is served by eliminating disparities having nothing to do with substantive obligations but arising from the sheer accident of geographical location in, on, over or around the high seas. 43 U.S.C.A. § 1333 (b); *Atlantis Development Corp. v. United States*, 5 Cir., 1967, 379 F. 2d 818.¹⁵ Indeed, " * * In actions arising at sea, frequently beyond the territorial bounds of any State, normal choices-of-law doctrines are likely to prove inadequate to the task of supplying certainty and predictability," *McAllister*, *supra*, 357 U.S. at 230, 78 S.Ct. at —, 2 L.Ed.2d at — (Brennan, J. concurring) for in the Fifth Circuit

¹⁵By rejecting state law here, we consider the real "interests sought to be served in the domestic intramural contest over the oil rich tidelands without disturbing interests of an international character having equal, if not greater importance in a day in which an incident on the High Seas may trigger a fissioned Armageddon." *Continental Oil*, *supra*, 417 F.2d at 1037.

alone state statutes of limitations range from one year in Louisiana to six years in Mississippi.¹⁶

We therefore reject Art. 3536 as a bar in this or similar cases. The doctrine of laches applies. Here, there being no question of adequate actual notice, complete lack of any prejudice, and a forthright failure to urge laches, *Delgado v. Matula*, 5 Cir., 1961, 291 F.2d 420, 1961 A.M.C. 1706, the suit was timely filed.

REVERSED AND REMANDED.

¹⁶

"However slavish absorption of state limitations rules will certainly not achieve federal uniformity when we consider that, in the Fifth Circuit-Gulf Coast area alone, this would mean, injured offshore of Mississippi, the litigant would have six years to file suit; off shore of Texas, two years; Alabama, one year in injury cases and two years in death cases; Florida, four years in injury cases and two years in death cases."

Brief of Amicus, p. 12.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1969

No. 28448

D. C. Docket No. CA-68-19-"D"

GAINES TED HUSON,
Plaintiff-Appellant,

versus

CHEVRON OIL COMPANY,
Defendant-Appellee,

versus

OTIS ENGINEERING CORPORATION, ET AL.,
Third Party Defendant.

Appeal from the United States District Court for the
Eastern District of Louisiana.

Before BROWN, Chief Judge, AINSWORTH and
GODBOLD, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript
of the record from the United States District Court for

the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed, and that this cause be, and the same is hereby remanded to the said District Court in accordance with the opinion of this Court.

It is further ordered that defendant-appellee pay to plaintiff-appellant, the costs on appeal to be taxed by the Clerk of this Court.

Issued As Mandate: July 14, 1970.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 28448

GAINES TED HUSON,
Plaintiff-Appellant,
versus

CHEVRON OIL COMPANY,
Defendant-Appellee,
versus

OTIS ENGINEERING CORPORATION, ET AL.,
Third Party Defendant.

Appeal from the United States District Court for the
Eastern District of Louisiana

(August 10, 1970)

ON PETITION FOR REHEARING

Before BROWN, Chief Judge, AINSWORTH and
GODBOLD, Circuit Judges.

PER CURIAM: IT IS ORDERED that the petition
for rehearing filed in the above entitled and numbered
cause be and the same is hereby DENIED.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

OFFICE OF THE CLERK

August 25, 1970

EDWARD W. WADSWORTH

Clerk

Room 408-400 ROYAL ST.
NEW ORLEANS, LA. 70130

Mr. Lloyd C. Melancon
Attorney at Law
720 Hibernia Bank Bldg.
New Orleans, La. 70112

RE: NO. 28448 - Huson vs. Chevron Oil Co.
vs. Otis Engineering Corp., et al.

Mandate Stayed to 9/24/70.

Dear Sir:

The Court has this day granted a stay of the issuance of the mandate to the date as shown above. If during the period of the stay there is filed with the clerk of this Court a notice from the clerk of the Supreme Court that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court. Upon the filing of a copy of an order of the Supreme Court denying the petition for writ of cer-

tiorari the mandate shall issue immediately under Rule 41, FRAP.

Under revised Rule 21(1) of the Supreme Court effective July 1, 1970, a record is no longer required in connection with an application for writ of certiorari, and therefore; will not be routinely prepared by this office. 38 LW 3502.

Enclosed is a copy of the opinion, judgment and order denying rehearing which are still required by the Supreme Court to be incorporated as an appendix to your petition.

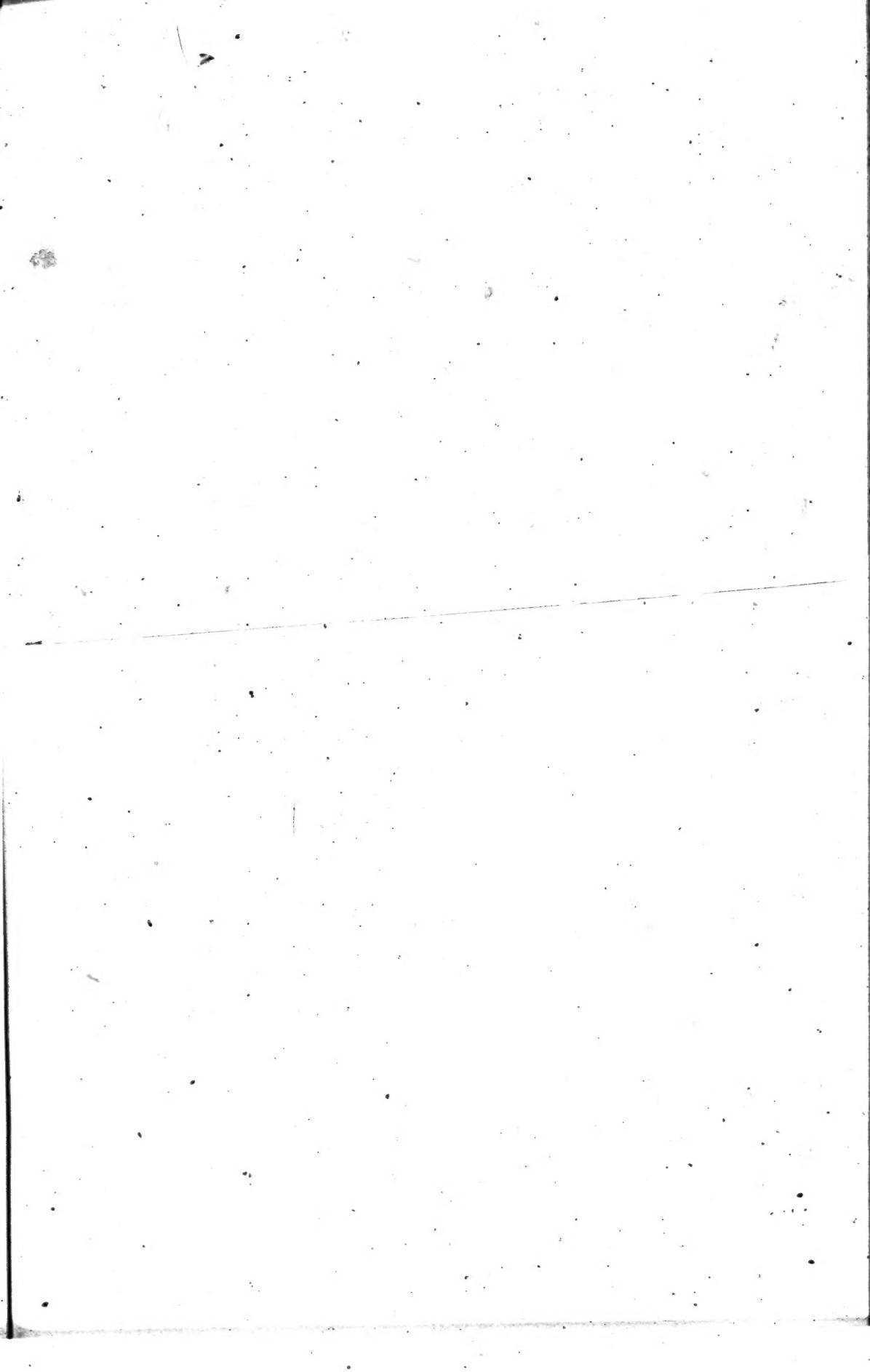
Very truly yours,

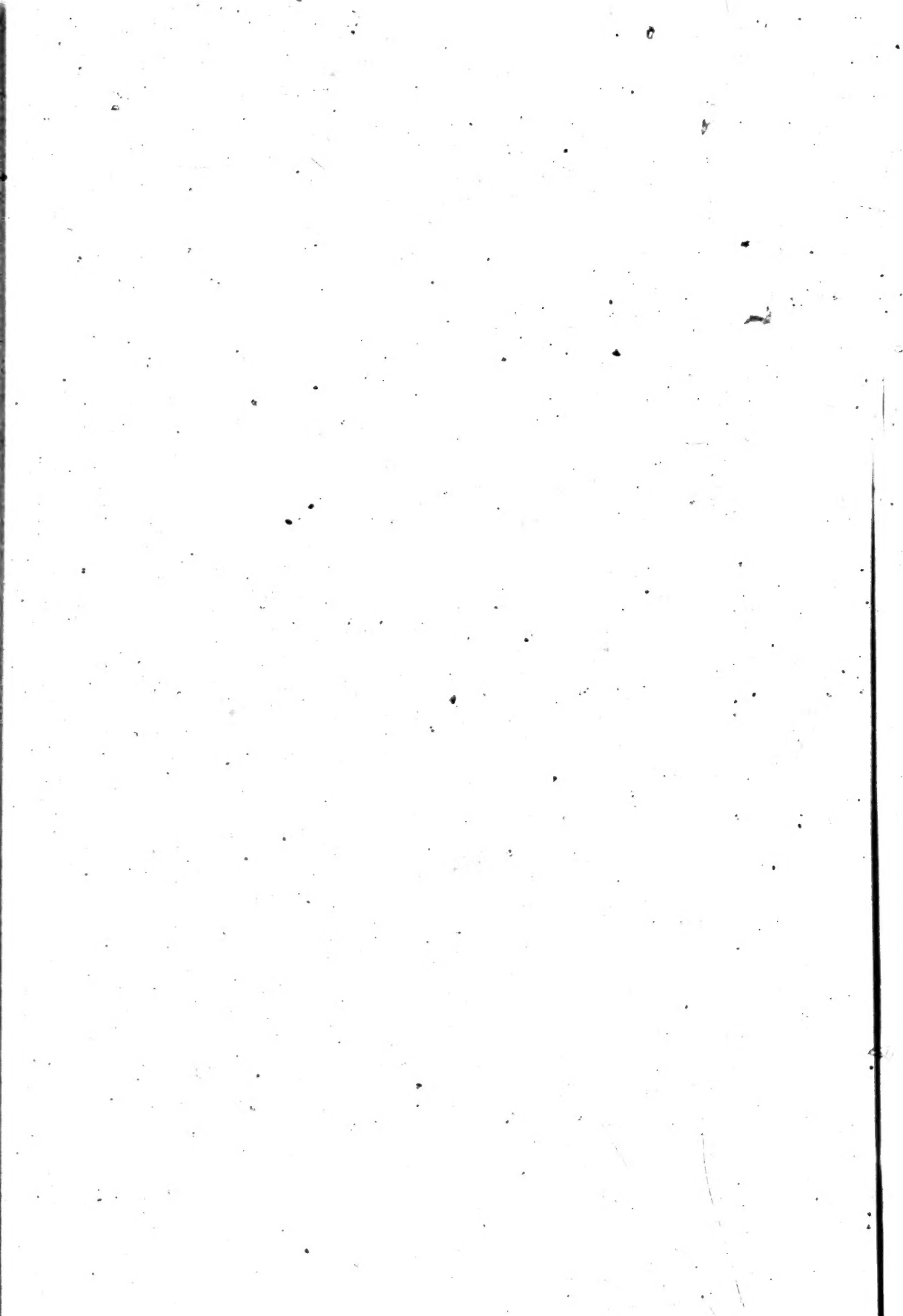
EDWARD W. WADSWORTH,
Clerk

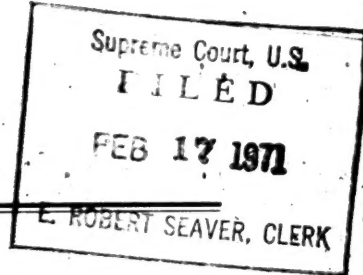
(Signed) G. F. GANUCHEAU
G. F. Ganucheau
Chief Deputy Clerk

cc: Mr. Samuel C. Gainsburgh
Mr. Blake West

/ra
enc.







IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~661~~

70-11

CHEVRON OIL COMPANY,

Petitioner,

versus

GAINES TED HUSON,

Respondent.

RESPONSE TO PETITION FOR CERTIORARI BY
AND ON BEHALF OF GAINES TED HUSON

SAMUEL C. GAINSBURGH
1718 Nat. Bank of Commerce Bldg.
New Orleans, Louisiana 70112
ATTORNEY FOR RESPONDENT,
GAINES TED HUSON

Of Counsel:

KIERR and GAINSBURGH
New Orleans, Louisiana

TABLE OF CONTENTS

	Page
INDEX OF AUTHORITIES	1
RESPONSE TO PETITION FOR CERTIORARI	1
CERTIFICATE OF SERVICE	7

INDEX OF AUTHORITIES

Cases

Akers v. States Marine Lines Inc., 344 F. 2d 217 (CCA 5, 1965)	6
Beyer Transportation Co. v. Whiteman Con- tracting Co., 187 So. 143 (La.App., 1939)	4
Cipriano v. City of Houma, 395 U.S. 701, 23 L.Ed. 2d 647, 89 S.Ct. 1897 (1969)	3
Crews v. Arundel Corp., 386 F. 2d 528 (CCA 5, 1967)	6
Dore v. Link Belt Co., 391 F. 2d 671 (CCA 5, 1968)	6
Fidelity & Guaranty Co. of N.Y. v. C/B Mr. Kim, 345 F. 2d 45 (CCA 5, 1965)	6
Flowers v. Savannah Machine & Foundry Co., 310 F. 2d 135, 139 (CCA 5, 1962)	2
Levinson v. Deupree, 345 U.S. 648, 73 S.Ct. 914, 97 L.Ed. 1319 (1953)	4
Linkletter v. Walker, 381 U.S. 618, 14 L.Ed, 2d 601, 85 S.Ct. 1731 (1965)	3
Loffland Bros. Co. v. Roberts, 386 F. 2d 540, 545 (CCA 5, 1967)	2

II

AUTHORITIES (Continued)

	Page
Morales v. Moore-McCormack Lines, 208 F. 2d 218, 221 (CCA 5, 1953)	3
Movable Offshore Co. v. Oursley, 346 F. 2d 870, 873 (CCA 5, 1965)	2
Newman v. Eldridge, 107 La. 315, 31 So. 688 (1902)	4
Pure Oil Co. v. Snipes, 293 F. 2d 60 (CCA 5, 1961)	2
Rodrigue v. Aetna Cas. & Surety Co. 395 U.S. 352, 23 L.Ed. 2d 360, 89 S.Ct. 1835 (1969)	2
West v. Upper Miss. Towing Corp., 221 F. Supp. 590 (D.Minn., 1963)	3
 Other	
Corpus Juris Secundum, Vol. 30A, Equity, §112	6
Gilmore & Black, The Law of Admiralty	2
Time Magazine, March 1, 1971, Appendix "A" ...	3

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1970

No. 661

CHEVRON OIL COMPANY,
Petitioner,
versus
GAINES TED HUSON,
Respondent.

RESPONSE TO PETITION FOR CERTIORARI
BY AND ON BEHALF OF GAINES TED HUSON

May it please the Court:

In response to the petition for certiorari filed herein, Respondent, Gaines T. Huson, respectfully submits that:

1. The Court of Appeals for the Fifth Circuit correctly held that this personal injury action was not time-barred by a Louisiana statute of limitation that was not applicable to this claim either at the time Respondent was injured or at the time he instituted suit against Petitioner;

and

2. The Court of Appeals for the Fifth Circuit correctly held that Petitioner is not en-

titled to a day in Court on the non-asserted defense of *laches*.

1.

Respondent was injured aboard a fixed offshore platform in the Gulf of Mexico on the 17th day of December, 1965. For at least four years before Respondent's claim arose the jurisprudence had held consistently that the rights and remedies of offshore fixed platform injury victims were to be governed by the general maritime law of the United States,¹ by virtue of which the timeliness of actions has always been determined via the equitable doctrine of *laches*.² This action was instituted on January 4, 1968, and was actively prepared for trial by the parties without hint or suggestion by Petitioner that the suit was either "stale" or otherwise time-barred. Only after this Honorable Court's decision in *Rodrigue*,³ some eighteen months after suit was filed, did Petitioner move for and obtain dismissal of the case on the ground that it was "prescribed" under Louisiana law.⁴

It is axiomatic that "ignorance of the law is no

¹Pure Oil Co. v. Snipes, 293 F. 2d 60 (CCA 5, 1961); Flowers v. Savannah Machine & Foundry Co., 310 F. 2d 135, 139 (CCA 5, 1962); Movable Offshore Co. v. Oursley, 346 F. 2d 870, 873 (CCA 5, 1965); Loffland Bros. Co. v. Roberts, 386 F. 2d 540, 545 (CCA 5, 1967).

²Gilmore & Black, The Law of Admiralty, p. 296, note 149.

³Rodrigue v. Aetna Cas. & Surety Co., 395 U.S. 352, 23 L.Ed. 2d 360, 89 S.Ct. 1835 (1969).

⁴Petition, pp. 20-21; *Rodrigue* was decided June 9, 1969, the Dist. Ct. dismissed this action on July 23, 1969.

excuse.”⁵ But, the truth is the law that Respondent is presumed to have known did not require that he file his suit within the time set forth by the law of Louisiana, or of any other state.⁶

Assuming, *arguendo*, that *Rodrigue* commands application of the varied limitation statutes⁷ of the “adjacent” states to fixed platform injury victims from various states,⁸ Respondent forcefully urges that even this result should obtain only *prospectively*.

Last Term, Your Honors said:

“Where a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the ‘injustice or hardship’ by a holding of nonretroactivity.”⁹

It is difficult to imagine a more unjust or harsh result than the one for which Petitioner contends in this case. In refusing to impose such a burden on this Re-

⁵See *West v. Upper Miss. Towing Corp.*, 221 F.Supp. 590 (D.Minn., 1963) and *Morales v. Moore-McCormack Lines*, 208 F. 2d 218, 221 (CCA 5, 1953).

⁶*Pure Oil v. Snipes*, *Movable Offshore Co. v. Oursley and Loffland Bros. Co. v. Roberts*, *supra*, n.1.

⁷Mississippi, 6 years; Texas, 2 years; Alabama, 1 year for injury, 2 years for death; Florida, 4 years for injury, 2 years for death; Louisiana, 1 year.

⁸See *Time Magazine*, March 1, 1971, p. 16; Appendix “A” which clearly indicates that platform workers are not typically all from the “adjacent” state.

⁹*Cipriano v. City of Houma*, 395 U.S. 701, 23 L.Ed. 2d 647, 89 S.Ct. 1897 (1969); *Linkletter v. Walker*, 381 U.S. 618, 14 L.Ed. 2d 601, 85 S.Ct. 1731 (1965).

spondent, the judgment of the Court of Appeals is correct and it should not be disturbed.

Respondent further submits that the *rationale* of *Rodrigue* does not require even the prospective imposition of inflexible statutes of limitation upon the victims of offshore platform accidents.

In Louisiana, as elsewhere, the time limitation within which suit must be filed in injury cases is *procedural*, not substantive.¹⁰ Purely procedural provisions of state law may be, and have been, ignored in favor of "federal common law" or statutory rules, although this results in the survival of an action that would be time-barred under the state's procedural rules, even in "diversity" cases,¹¹ which this is not.

In *Rodrigue*, Your Honors observed:

"The purpose of the Outer Continental Shelf Lands Act was to define a body of law applicable to the seabed, the subsoil, and the fixed structures such as those in question here on the outer Continental Shelf. That this law was to be *federal law* of the United States, applying *state law only as federal law* and then only when not inconsistent with appli-

¹⁰Newman v. Eldridge, 107 La. 315, 31 So. 688 (1902); Beyer Transp. Co. v. Whiteman Contracting Co., 187 So. 143 (La.App., 1939).

¹¹Levinson v. Deupree, 345 U.S. 648, 73 S.Ct. 914, 97 L.Ed. 1319 (1953).

cable federal law, is made clear by the language of the Act.¹² [Emphasis added.]

It seems clear that the District Court in the instant case was a *federal forum*, not "just another Court of the state" in which it sits. Under Louisiana law, as has been mentioned, prescription being procedural, the timeliness of suit is determined by the law of the *forum*, irrespective of the jurisdiction from which the substantive rights emanate.¹³ Therefore, the District Court in the instant case was not *bound* to apply Louisiana's mechanical one-year limitation period to the instant claim. In holding that, as a matter of *federal* policy, it should not have done so, Respondent submits that the Court of Appeals was acting within its prerogative of declaring what the *federal* law should be in the cases of this nature. That its choice may have been influenced by its apparent knowledge of the undeniable maritime characteristics¹⁴ of these Congressionally-declared non-maritime premises is, we submit, not improper, and should not be disturbed.

2.

As has been previously mentioned, Petitioner at no time suggested during the pendency of this action in the District Court that it was "stale" or that it was barred by *laches*, although it is presumed to have known that such a defense was available even before *Rodrigue* was decided.

¹²395 U.S. 355-356.

¹³*Supra*, n. 10.

¹⁴See Appendix "A"

Though perhaps not articulated in the Court of Appeals' opinion, the basis for the Court's holding that Respondent's claim is *not* barred by *laches* is the patent absence of one of the essential elements of that defense: *inexcusable* delay in bringing suit.¹⁵ If the "delay" in filing suit is "excusable," *laches* does not accrue, as a matter of law.¹⁶

When this action was instituted, it was in no way untimely, unless one imputes greater clairvoyance to Respondent and his counsel than was possessed by the Judges of the Court of Appeals for the Fifth Circuit in *Snipes, Oursley, Roberts*¹⁷ and *Dore*.¹⁸

Laches is an equitable doctrine, not made up of *ex post facto* considerations that would be implicit in holding delay that was "excusable" when suit was filed to be *inexcusable* a year and a half thereafter. *Laches* is concerned with the *effects* of delay, not the fact of it,¹⁹ and Petitioner has never demonstrated the slightest disadvantage to which it might even remotely have been subjected by reason of the fact that Respondent did not file this action sooner than he did. Indeed, were it not for Respondent's "delay" in filing suit, it is not improbable that this litigation would

¹⁵*Crews v. Arundel Corp.*, 386 F. 2d 523 (CCA 5, 1967); *Fidelity & Guaranty Co. of N.Y. v. C/B Mr. Kim*, 345 F. 2d 45 (CCA 5, 1965); *Akers v. States Marine Lines, Inc.*, 344 F. 2d 217 (CCA 5, 1965).

¹⁶*Crews v. Arundel Corp.*, *supra*, 386 F. 2d at p. 531.

¹⁷*Supra*, n. 1.

¹⁸*Dore v. Link Belt Co.*, 391 F. 2d 671 (CCA 5, 1968), reversed sub nom, *Rodrigue v. Aetna Cas. & Surety Co.*, *supra*, n. 3.

¹⁹30A C.J.S., Equity, §112, pp. 25-26.

have been over and done with before *Rodrigue* descended upon us.

The holding of the Court of Appeals that Respondent's claim is not, and could not be, barred by *laches* is both equitably and legally correct and this petition for a writ of certiorari should be denied.

Respectfully submitted,

Samuel C. Gainsburgh
1718 Nat. Bank of Commerce Bldg.
New Orleans, Louisiana 70112
ATTORNEY FOR RESPONDENT,
GAINES, TED HUSON

Of Counsel:
KIERR and GAINSBURGH
New Orleans, Louisiana

CERTIFICATE

I, the undersigned member of the Bar of this Court, do hereby certify that two copies of the above and foregoing Response to the Petition for Certiorari have been served upon Lloyd C. Melancon, Esq., 720 Hibernia Bank Building, New Orleans, Louisiana 70112; by mailing the same to his offices, postage prepaid, from New Orleans, Louisiana, this ____ day of March, 1971.

Samuel C. Gainsburgh

AMERICAN SCENE

Oilmen at Sea: Life on South Marsh Island 73

Like stark sentinels, they loom high above the ocean waters, seeming in storm and mist to have been there nearly as long as the sea. They are the thousands of offshore oil platforms that dot the continental shelf of North America. They are the hostile homes of the offshore oil workers, a very tough and particular breed of men. Houston Bureau Chief Leo Janos went to live among them for a time on a platform off the Gulf Coast of Louisiana. His report:

FOR the 42 men who work a 12-hr. shift on it each day, the 20-storied South Marsh Island 73—one of 6,300 oil platforms and drilling rigs, stretched across the coastal gulf—is both a punisher and a provider, a harsh, demanding and dangerous mistress. And yet the island gives as awesomely as it takes. Located 103 miles offshore, its pipelines stretch thousands of yards across the ocean floor. Drawing from seven big reservoirs 7,000 ft. beneath the primordial ooze of the gulf, it can pump 28,000 bbl. of crude oil to the mainland each day through its 7-in. pipeline.

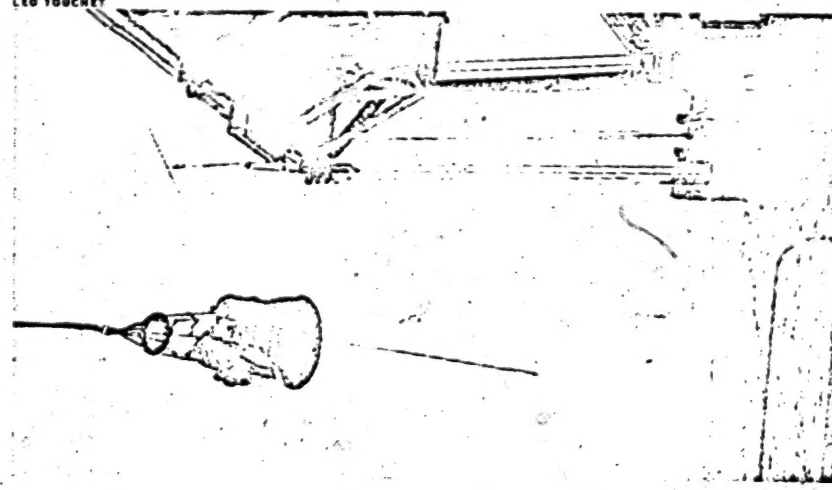
South Marsh Island 73's heartbeat is a powerful oil drill rotating 140 r.p.m., pushing 200,000 lbs. of pipe with 4,000 lbs. of pressure. There is an omnipresence about its throb and its beat, shaking the two-storied concrete bunkers the men live in, even as they sleep. It rarely ceases. "Ain't enough wind or rain, ice or fog to ever stop that son of a bitch," one crewman observes with grudging respect.

For the unskilled half of the crew, most of whom are Louisiana Cajuns and Mississippi farmers, life on the impregnable, womanless island becomes a monotonous cycle of dirt, grease, curses and the knowledge that tomorrow will be more of the same. The men, known as roustabouts, work and sleep 14 days at a time on the platform before they get a week's rest on shore. They are tired of this life. Many would

like to quit. But they cannot. They find themselves trapped by the realization that however torturous the job is, the money is good, better than they could make anywhere else with their meager education, and that the poverty they come from is even more oppressive. So they stay, breaking their backs for \$2.50 an hour, dragging 300-lb. sections of pipe and stacking endless 100-lb. sacks of chemical mud.

Roustabouts or technicians, all are effectively imprisoned on their tight little island. No alcohol, not even beer, is permitted on board. Fighting means immediate dismissal; lateness to a post a severe reprimand. Always, the threat of death or serious injury is with the crew. Two months ago, about 100 miles away on the gulf, a fiery blowout on one platform killed six men and destroyed 20 operating wells. Several veteran roust-

OIL WORKERS BEING HOISTED TO PLATFORM



abouts have fingers missing from accidents. Last September, a roustabout was killed when a 600-lb. section of pipe fell and crushed his skull.

"I never realized that human beings could work this hard," says James McAlister, 22, a Belfast-born roustabout who fled the religious wars of home. "At 6 in the morning, it's dark, wet and cold. You begin sweeping the water from the deck that accumulates from the night's mists. The deck must be kept dry so that the men don't slip and fall. Everything is steel, so a fall can really do damage. Whatever you do, you get filthy. Your hands, your face, your shoes, trousers and shirt become smeared with grease, rust and mud chemicals. I never knew 4 days could take so long." Smiley Dunaway, 55, from Columbia, Miss., who has worked as a roustabout for 20 years, put two boys through college on his earnings. "But it cost me two-thirds of my life on the gulf to do it," he says wistfully.

After work, the men take hot showers, chuck their dirty clothes into washing machines and take off for the chow hall. There are separate menus for the two prevailing cultures on board. The Cajuns get their rice, beans and gumbo and the Mississippians their ham, greens and potatoes. Then they talk sex, watch television or play a Cajun card game called Bourée (pronounced boo-ray). To a visitor, there seems a relaxed camaraderie aboard, as though the men had achieved a kind of brotherhood through suffering. Still, there is no desire by the men to see their experience repeated, particularly in their families.

In the mess hall, a young, rawboned roustabout drains his coffee cup, zips up his waterproof jacket and stands, listening briefly for the fickle north wind that whips cruelly across the gulf this time of year. Then he sighs: "Well, I guess it's time to feed my young'uns." Somehow his words sound like a note to for the offshore oilmen.

I N D E X

	<u>PAGE</u>
List of Authorities -----	i
Opinions Below -----	1
Jurisdiction -----	2
Statute Involved -----	2
Questions Presented -----	6
Statement -----	7
Argument -----	8
1- The United States Court of Appeals for the Fifth Circuit has decided a question of law in conflict with the applicable decision of this Court in <u>Rodrigue</u> , supra. -----	8
2- The United States Court of Appeals for the Fifth Circuit has decided important questions of law which have not been, but should be, settled by this Court. -----	14
Conclusion -----	16
Proof of Service -----	17

I N D E X

	<u>PAGE</u>
List of Authorities -----	i
Opinions Below -----	1
Jurisdiction -----	2
Statute Involved -----	2
Questions Presented -----	6
Statement -----	7
Argument -----	8
1- The United States Court of Appeals for the Fifth Circuit has decided a question of law in conflict with the applicable decision of this Court in <u>Rodrigue</u> , supra. -----	8
2- The United States Court of Appeals for the Fifth Circuit has decided important questions of law which have not been, but should be, settled by this Court. -----	14
Conclusion -----	16
Proof of Service -----	17

LIST OF AUTHORITIES - Page 1PAGECases:

Ackerman versus McShane, 43 La. Ann. 507 (1891) -----	13
Adle, et al. versus Prudhomme, 16 La. Ann. 343 (1861) -----	13
Akers versus State Marine Lines, Inc., 344 F.2d 217 (1965) -----	16
Arrington versus Grant Parish School Board, 130 So.2d 443 (1961) -----	14
Bounds versus T.L. James & Co., 124 F.Supp. 563 (1954) -----	10
Brewster versus J.C. Byram & Co., Inc., 149 So. 118 (1933) -----	13
Costello versus United States, 365 U.S. 265 (1961) -----	16
Delgado versus The Malula, 291 F.2d 420 (1961) -----	15,16
Fidelity & Casualty Co. of N.Y: versus C/B Mr. Kim, 345 F.2d 45 (1965) --	16
Gaston versus B.F.Walker, Inc., 400 F.2d 671 (1968) -----	11
General Talking Pictures Corporation versus Western Electric Company, et al., 304 U.S. 175 (1937) -----	2
Giddens versus Isbrandsten Co., 355 F.2d 125 (1966) -----	16

LIST OF AUTHORITIES - Page 2

	<u>PAGE</u>
Goett versus Union Carbide Corp., 361 U.S. 340 (1960) -----	2
Goodwin versus Bodcaw Lumber Co., 109 La. 1050 (1902) -----	12
Guillory versus Avoyelles Ry. Co., 104 La. 11 (1900) -----	11
Lafarque versus Samuel, 367 F.2d 396 (1966) -----	11
McMurray versus Orleans Parish School Board, 179 So. 834 (1938) -----	13
Mejia versus U.S., 152 F.2d 686 (1946) -----	11
Oglesby versus Attrill, 105 U.S. 605 (1882) -----	13
Rodrigue, et al. versus Aetna Casualty and Surety Company, et al., 395 U.S. 352* (1969) -----	8,9, 13,14,15
Russ versus Union Oil Company, 113 La. 196 (1904) -----	13
Tapp versus Guaranty Finance Co., 158 So.2d 228 (1964) -----	10
The Tungus versus Skovgaard, 358 U.S. 588 (1959) -----	2
Thompson versus Gallien, 127 F.2d 664 (1942) -----	12

LIST OF AUTHORITIES - Page 3

	<u>PAGE</u>
Vega versus The Malula, 291 F.2d 415 (1961) -----	16
 <u>Statutes:</u>	
Code Napoleon of 1804 -----	13
Civil Code of 1808 -----	13
Civil Code of 1825 -----	13
LSA-C.C. article 7 -----	13
LSA-C.C. article 2315 -----	2,5,6, 7,10,11,12,13
LSA-C.C. article 3536 -----	2,6,7, 8,10,11,12,13
U.S.C.A. Title 28, Section 1254 (1)----	2
Outer Continental Shelf Lands Act U.S.C.A. Title 43, Sections 1331, et seq. -----	2,6
Outer Continental Shelf Lands Act U.S.C.A. Title 43, Section 1332(a) ----	3
Outer Continental Shelf Lands Act U.S.C.A. Title 43, Section 1333 (a) (1) (2) (3) -----	3
 <u>Miscellaneous:</u>	
Black's Law Dictionary, Third Edition, page 1672 -----	13

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1970

NO. 661

CHEVRON OIL COMPANY,

Petitioner

versus

GAINES TED HUSON,

Respondent.

BRIEF ON THE MERITS BY PETITIONER
CHEVRON OIL COMPANY ON WRIT OF
CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE THE CHIEF JUSTICE AND THE
ASSOCIATE JUSTICES OF THE SUPREME COURT OF
THE UNITED STATES:

MAY IT PLEASE THE COURT:

OPINIONS BELOW

The judgment of the United States Dis-
trict Court is printed in the Appendix

(A. 152) and does not appear in official or unofficial reports; and, the opinion by the United States Court of Appeals for the Fifth Circuit is also printed in the Appendix (A. 194) and is cited as Gaines Ted Huson, Plaintiff versus Chevron Oil Company, Defendant versus Otis Engineering Corporation, et al., Third-Party Defendants, 430 F. 2d 27 (1970).

JURISDICTION

Jurisdiction to review this case upon a writ of certiorari is authorized and created by U.S.C.A. Title 28, Section 1254(1). See: General Talking Pictures Corporation versus Western Electric Company, et al., 304 U.S. 175 (1937); The Tungus versus Skovgaard, 358 U.S. 588 (1959); and, Goett versus Union Carbide Corp., 361 U.S. 340 (1960).

The opinion of the United States Court of Appeals for the Fifth Circuit was rendered July 14, 1970. A petition for rehearing was filed by petitioner on July 27, 1970 and denied August 10, 1970, without a further opinion. A motion was made to that Court for stay of mandate pending the filing of the petition for a writ of certiorari and was granted on August 25, 1970. The petition for a writ of certiorari was filed with this Court on September 8, 1970 and granted on May 3, 1971. An enlargement of time within which to file the appendix record and petitioner's brief was granted on May 13, 1971, and the time therefor extended to and including July 19, 1971.

STATUTE INVOLVED

The pertinent provisions of the Outer Continental Shelf Lands Act, U.S.C.A. Title 43, Sections 1331 et seq., and LSA-C.C.

articles 2315 and 3536, are as follows:

U.S.C.A. Title 43, Section 1332

"(a) It is declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter."

U.S.C.A. Title 43, Section 1333

"(a) Constitution and United States laws; laws of adjacent States; publication of projected State lines; restriction on State taxation and jurisdiction.

"(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: Provided, however, that mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

"(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of the effective date of this subchapter are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

"(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom."

LSA-C.C. article 2315

Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.

The right to recover damages to property caused by an offense or quasi offense is a property right which, on the death of the obligee, is inherited by his legal, instituted, or irregular heirs, subject to the community rights of the surviving spouse.

The right to recover all other damages caused by an offense or quasi offense, if the injured person dies, shall survive for a period of one year from the death of the deceased in favor of: (1) the surviving spouse and child or children of the deceased, or either such spouse or such child or children; (2) the surviving father and mother of the deceased, or either of them, if he left no spouse or child surviving, and (3) the surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving. The survivors in whose favor this right of action survives may also recover the damages which they sustained through the wrongful death of the deceased. A right to recover damages under the provisions of this paragraph is a property right which, on the death of the survivor in whose favor the right of action survived, is inherited by his legal, instituted, or irregular heirs,

whether suit has been instituted thereon by the survivor or not.

As used in this article, the words "child", "brother", "sister", "father", and "mother" include a child, brother, sister, father, and mother, by adoption, respectively.

LSA-C.C. article 3536

The following actions are also prescribed by one year:

That for injurious words, whether verbal or written, and that for damages caused by animals; or resulting from offenses or quasi offenses.

That which a possessor may institute, to have himself maintained or restored to his possession, when he has been disturbed or evicted.

That for the delivery of merchandise or other effects, shipped on board any kind of vessels.

That for damage sustained by merchandise on board ships, or which may have happened by ships running foul of each other.

QUESTIONS PRESENTED

1. Whether the laws of the State of Louisiana (LSA-C.C. articles 2315 and 3536) are made applicable under the provisions of the Outer Continental Shelf Lands Act, U.S. C.A. Title 43, Sections 1331 et seq., to an accident occurring on a fixed and immobile artificial island drilling structure

located off the Louisiana coast, resulting in personal injury and damages, but not death, to an individual employed thereon.

2. If the answer to the foregoing question No. 1 is in the affirmative, whether LSA-C.C. article 3536 allowed respondent only one year, calculated from the date of the accident, within which to have filed his complaint for damages under LSA-C.C. article 2315.

3. If the answer to the foregoing question No. 1 is in the negative, whether the admiralty and general maritime law applies to an accident occurring on a fixed and immobile artificial island drilling structure located off the Louisiana coast, resulting in personal injury and damages, but not death, to an individual employed thereon.

4. If the answer to the foregoing question No. 3 is in the affirmative, whether a separate trial on the issue of laches is required in order for respondent to establish and prove excusable delay in the filing of his complaint more than one year after the alleged accident and for petitioner to be able to show prejudice as a result thereof.

STATEMENT

Respondent sued petitioner (A. 1) for personal injuries allegedly sustained on the latter's fixed and immobile artificial island drilling structure off the Louisiana coast (A. 114, 128, 129, 142 and 143), while in the course and scope of his employment by the independent contractor Otis Engineering Corporation (A. 160-163, 165-172).

Upon completion of discovery and subsequent to the initial pre-trial conference,

a motion for summary judgment was asserted by petitioner (A. 113) against respondent under the provisions of LSA-C.C. article 3536, on the grounds that any and all of his claims against this defendant were perempted, prescribed and time-barred inasmuch as the complaint was filed more than 24 months after the date of the alleged accident. The United States District Court on July 23, 1969 granted a summary judgment to petitioner (A. 152) relying on Rodrigue, et al. versus Aetna Casualty and Surety Company, et al., 395 U.S. 352 (1969), after which an appeal was taken by respondent to the United States Court of Appeals for the Fifth Circuit (A. 154).

In reversing the United States District Court, the United States Court of Appeals for the Fifth Circuit held in its July 14, 1970 opinion (A. 194) that notwithstanding the contrary holding in Rodrigue, supra, the admiralty and general maritime law doctrine of laches was applicable to the alleged accident of respondent occurring on petitioner's fixed and immobile artificial island drilling structure and remanded the case for a trial on the merits. A petition for rehearing was timely filed, but promptly denied, without opinion, on August 10, 1970.

ARGUMENT

- 1- THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT HAS DECIDED A QUESTION OF LAW IN CONFLICT WITH THE APPLICABLE DECISION OF THIS COURT IN RODRIGUE, SUPRA.

It is undisputed and the evidence clearly established that at all times pertinent to the allegations of the complaint, respondent worked in the course and scope of his

employment by and under the control, direction and supervision of the independent contractor, Otis Engineering Corporation, on petitioner's fixed and immobile artificial island drilling structure off the Louisiana coast. Moreover, the affirmative allegations of respondent in the complaint, which was filed January 4, 1968, clearly and unequivocally show that the cause of action, if any, arose out of a December 17, 1965 injury.

Because of these uncontroverted facts, the United States District Court properly dismissed the complaint inasmuch as there was no genuine issue as to any material fact and petitioner was entitled to summary judgment as a matter of law. This Court recently considered and reviewed the applicable laws to such "artificial island drilling rigs located on the outer Continental Shelf off the Louisiana coast," in Rodrigue, et al. versus Aetna Casualty and Surety Company, et al., supra, and beginning at page 355, stated:

"In light of the principles of traditional admiralty law, the Seas Act, and the Lands Act, we hold that petitioners' remedy is under the Lands Act and Louisiana law. The Lands Act makes it clear that federal law, supplemented by state law of the adjacent State, is to be applied to these artificial islands as though they were federal enclaves in an upland State. This approach was deliberately taken in lieu of treating the structures as vessels, to which admiralty law supplemented by the law of the jurisdiction of the vessel's owner would apply. *The Hamilton*, 207 U.S. 398 (1907). This was

done in part because men working on these islands are closely tied to the adjacent State, to which they often commute and on which their families live, unlike transitory seamen to whom a more generalized admiralty law is appropriate. Since the Seas Act does not apply of its own force under admiralty principles, and since the Lands Act deliberately eschewed the application of admiralty principles to these novel structures, Louisiana law is not ousted by the Seas Act, and under the Lands Act it is made applicable. (Emphasis added).

The purpose of the Outer Continental Shelf Lands Act was to define a body of law applicable to the seabed, the subsoil, and the fixed structures such as those in question here on the outer Continental Shelf. That this law was to be federal law and then only when not inconsistent with applicable federal law, is made clear by the language of the Act."

Accordingly, the substantive law of the State of Louisiana was applicable to respondent's claims arising out of his alleged injury on petitioner's fixed and immobile artificial island drilling structure. In this connection, LSA-C.C. article 3536 was controlling, as well as the provisions of LSA-C.C. article 2315, wherein the right to recover against a tort-feasor must be exercised by a claimant within one year.¹

¹ Bounds versus T.L. James & Co., 124 F. Supp. 563 (1954); Tapp versus Guaranty
(continued on next page)

Such limitation of action is a period of peremption² and the Supreme Court of Louisiana in Guillory versus Avoyelles Ry Co., 104 La. 11 (1900), on page 15, ruled:

"When a statute creates a right of action and stipulates a delay within which the right is to be executed, the delay thus fixed is not, properly speaking, one of prescription, but is one of peremption. Statutes of prescription simply bar the remedy. Statutes of peremption destroy the cause of action itself. That is to say, after the limit of time expires the cause of action no longer exists; it is lost."

In Mejia, supra, the United States Court of Appeals for the Fifth Circuit was called upon to interpret the application of LSA-C.C. articles 2315 and 3536 in a tort action. Therein, on page 688, it was held:

"The only statute in the state of Louisiana providing for damages for death is Article 2315 of the Civil Code of that state, as amended

Finance Co., 158 So.2d 228 (1964); and, Gaston versus B.F.Walker, Inc., 400 F. 2d 671 (1968).

2/ Mejia versus U.S., 152 F.2d 686 (1946); Lafarque versus Samuel, 367 F.2d 396 (1966); and, Gaston versus B.F.Walker, Inc., 400 F.2d 671 (1968).

which creates such rights, but which limits its life to the space of one year from the death.³ The one-year limit of Article 2315 is not in the nature of a limitation but it is a peremption, and, unless the right created by the Article is exercised within the one-year period, it ceases to exist and is completely lost.⁴

3/ 2315 (2294) (N 1382). Torts-Liability-Survival of action.- Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it; ----.

4/ Goodwin versus Bodcaw Lumber Co., 109 La. 1050, 1066, 34 So. 74, 80; Thompson versus Gallien, 5th Cir., 127 F.2d 664."

Simply stated, respondent in his complaint untimely asserted and sought certain rights granted by LSA-C.C. article 2315, which were controlled by LSA-C.C. article 3536. The question was whether or not he exercised his rights strictly in accordance with this law. He did not and his rights, if any, are now perempted, prescribed and time-barred.

In effect, respondent suggested that because of ignorance of the law, he should be excused for the delays and procrastination in asserting his rights. Of course, this is contrary to the jurisprudence of Louisiana wherein it is quite clear that such an error

of law affords no relief.³ This is true even in the case where plaintiff engaged and relied upon the advices of his attorney.⁴

Historically, the substantive law of Louisiana has always allowed an injured party the period of one year within which to seek redress against an alleged tort-feasor. Black's Law Dictionary, Third Edition, on page 1672, describes substantive law, as follows:

"That part of the law which the Courts are established to administer, as opposed to the rules according to which the substantive law itself is administered. That part of the law which creates, defines, and regulates rights, as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtaining redress for their invasion.-----".

In this connection, LSA-C.C. article 2315 dates back more than 150 years to the Civil Code of 1808 and to the Code Napoleon of 1804. Moreover, LSA-C.C. article 3536 in substance originated in the Civil Code of 1825 and neither were in any manner whatsoever affected nor changed by Rodrigue, *supra*.

3/ LSA-C.C. article 7.

Oglesby versus Attrill, 105 U.S. 605 (1882); Russ versus Union Oil Company, 113 La. 196 (1904); Brewster versus J.C. Byram & Co., Inc., 149 So. 118 (1933); Adle, et al. versus Prudhomme, 16 La. Ann. 343 (1861); and, Ackerman versus McShane, 43 La. Ann. 507 (1891).

4/ McMurray versus Orleans Parish School Board,
(continued on next page)

This then cannot be conscientiously urged as a "complete change in the law," as suggested below by respondent.

- 2- THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT HAS DECIDED IMPORTANT QUESTIONS OF LAW WHICH HAVE NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

In Rodrigue, supra, this Court, on page 365, after a lengthy discussion about the inapplicability of the admiralty and general maritime law to this type of an artificial island drilling structure, unequivocally ruled:

"In view of all this, and the disclosure by Senator Cordon to the Senate upon introduction of the bill that the admiralty or maritime approach of the original bill had been abandoned, it is apparent that the Congress decided that these artificial islands, though surrounded by the high seas, were not themselves to be considered within maritime jurisdiction. Thus the admiralty action under the Seas Act no more applies to these accidents actually occurring on the islands that it would to accidents occurring in an upland federal enclave or on a natural island to which admiralty jurisdiction had not been specifically extended. At a minimum,

179 So. 834 (1938); and, Arrington versus Grant Parish School Board, 130 So.2d 443 (1961).

the legislative history shows that accidents on these structures, which under maritime principles would be no more under maritime jurisdiction than accidents on a wharf located above navigable waters, were not changed in character by the Lands. Act."

The United States Court of Appeals for the Fifth Circuit clearly erred in failing to apply this well defined principle of law. Otherwise, as a result of the erroneous July 14, 1970 opinion, two separate laws are applicable in accidents occurring on fixed and immobile artificial island drilling structures. If the occurrence results in death to an individual, under the holding in Rodrigue, supra, the provisions of the laws of Louisiana are available; but, if only personal injuries are involved, then the admiralty and general maritime law shall control.

Further error was committed by the United States Court of Appeals for the Fifth Circuit in the conclusion contained in the July 14, 1970 opinion on page 13 (A. 206) wherein it was held.

"---. The doctrine of laches applies. Here, there being no question of adequate actual notice, complete lack of any prejudice, and a forthright failure to urge laches, Delgado v. Malula, 5 Cir., 1961, 291 F.2d 420, 1961 A.M.C. 1706, the suit was timely filed."

In the United States District Court, the only issue presented and resolved by the judgment was that of prescription and peremption under the laws of Louisiana. The issue as to

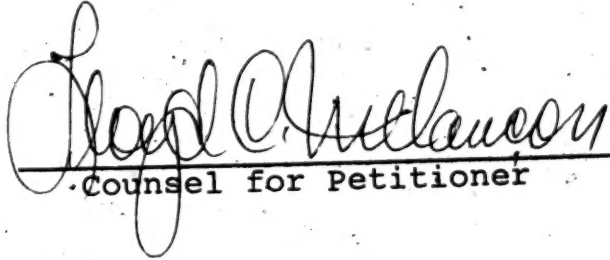
the possible application of the doctrine of laches under the admiralty and general maritime law was not argued or for that matter even presented, and a separate trial is required thereon. Costello versus United States, 365 U.S. 265 (1961); Vega versus The Malula, 291 F.2d 415 (1961); Delgado versus The Malula, 291 F.2d 420 (1961); Fidelity & Casualty Co. of N.Y. versus C/B Mr. Kim, 345 F.2d 45 (1965); Akers versus State Marine Lines, Inc., 344 F.2d 217 (1965); and, Giddens versus Isbrandsten Co., 355 F.2d 125 (1966). Obviously, if the admiralty and general maritime law doctrine of laches is ultimately held to be controlling, petitioner is entitled to its day in Court on this issue wherein a separate trial respondent must establish and prove excusable neglect in failing to file his cause of action within the one-year period and petitioner allowed to show prejudice as a result thereof.

CONCLUSION

It is respectfully submitted that the July 14, 1970 opinion of the United States Court of Appeals for the Fifth Circuit in No. 28,448 must be reversed and the July 23, 1969 judgment of the District Court of the United States, Eastern District of Louisiana, New Orleans Division, Civil Action No. 68-19D, affirmed and reinstated; and, in the alternative, should this Court determine that the admiralty and general maritime law doctrine of laches is applicable to respondent's alleged accident, a separate trial on this issue must be ordered for respondent to establish and prove excusable delay in the filing of his complaint and petitioner allowed to

show prejudice as a result thereof.

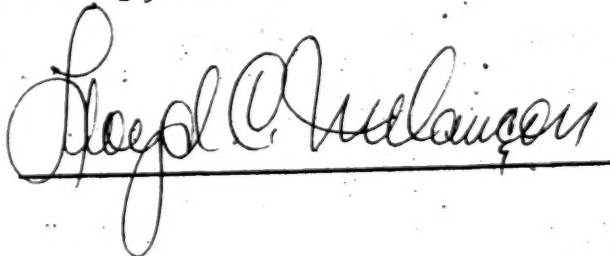
New Orleans, Louisiana, July 14, 1971.


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PROOF OF SERVICE

In furtherance of the Rules, I have served three copies of the above and foregoing brief on the merits upon all parties, by prepaid mail addressed to their counsel this 14th day of July, 1971.


Counsel for Petitioner

SUPREME COURT, U. S.

Supreme Court, U.S.

FILED

AUG 23 1971

R. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

No. 70-11

CHEVRON OIL COMPANY,

Petitioner,

versus

GAINES TED HUSON,

Respondent.

**On Certiorari To The United States
Court Of Appeals, Fifth Circuit**

RESPONDENT'S BRIEF ON THE MERITS

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TABLE OF CONTENTS

	Page
INDEX OF AUTHORITIES	i
SUMMARY OF ARGUMENT	1
ARGUMENT:	
I. STATUTES OF LIMITATIONS ARE DETERMINED BY THE LAW OF THE FORUM	3
A. RODRIGUE SHOULD HAVE PRO- SPECTIVE APPLICATION ONLY	6
II. LACHES NOT ESTABLISHED AS A MATTER OF LAW IN THIS CASE	8
III. RODRIGUE SHOULD BE RE-EXAMIN- ED AND OVERRULED	10
CERTIFICATE OF SERVICE	18

INDEX OF AUTHORITIES

Cases:

Akers v. States Marine Lines, Inc., 344 F.2d 217 (CCA 5, 1965)	10
Cipriano v. City of Houma, 395 U.S. 701, 23 L.Ed. 2d 647 (1969)	7
Crowell v. Benson, 285 U.S. 22, 76 L.Ed. 598 (1932)	13, 14
Crews v. Arundel Corp., 386 F.2d 528 (CCA 5, 1967)	10
D'Aleman v. Pan Am. World Airways, Inc., 259 F.2d 493 (CCA 2, 1958)	15
DeLovio v. Boit, 7 Fed.Cas. 418 (D.Mass., 1815) ..	11

II

AUTHORITIES (Continued)

	Page
Detroit Trust Co. v. Str. Thomas Barlum, 293 U.S. 21, 79 L.Ed. 176 (1934)	14, 15
Dore v. Link Belt Co., 391 F.2d 671 (CCA 5, 1968) ..	6
Fidelity & Cas. Co. of N.Y. v. C/B Mr. Kim, 345 F.2d 45 (CCA 5, 1965)	4, 9
Flowers v. Savannah Machine & Foundry Co., 310 F.2d 135 (CCA 5, 1962)	7
Higa v. Transocean Airlines, Inc., 230 F.2d 780 (CCA 9, 1955)	15
Hough v. Western Transp. Co. [The Ply- mouth], 70 U.S. 20, 18 L.Ed. 125 (1866)	16
Kenny v. Trinidad Corp., 349 F.2d 832 (CCA 5, 1965)	4
Knickerbocker Ice Co. v. Stewart, 253 U.S. 149, 64 L.Ed. 834 (1920)	11, 13
Kozan v. Comstock, 270 F.2d 839 (CCA 5, 1959) ..	4
Larrois v. Victory Carriers, Inc., 316 F.2d 63 (CCA 2, 1963)	10
Linkletter v. Walker, 381 U.S. 618, 14 L.Ed.2d 601 (1965)	7
Loffland Bros. Co. v. Roberts, 386 F.2d 540 (CCA 5, 1967)	6, 7
Mejia v. U.S., 152 F.2d 686 (CCA 5, 1946)	4
Moragne v. States Marine Lines, Inc., 398 U.S. 375, 26 L.Ed.2d 339 (1970)	16

III AUTHORITIES (Continued)

	Page
Movable Offshore Co. v. Oursley, 346 F.2d 870 (CCA 5, 1965)	11
National Airlines, Inc. v. Stiles, 268 F.2d 400 (CCA 5, 1959)	15
Newman v. Eldridge, 107 La. 315, 31 So. 688 (1902)	4
Noel v. Linea Aeropostal Venezolana, 247 F.2d 677 (CCA 2, 1957)	15
Page v. Cameron Iron Works, Inc., 259 F.2d 420 (CCA 5, 1958)	4
Panama R. R. Co. v. Johnson, 264 U.S. 375, 68 L.Ed. 748 (1924)	13, 14
Phila., W. & B.R. Co. v. Phila. & H. Towboat Co., 64 U.S. 209 (1860)	14
Phoenix Const. Co. v. Str. Poughkeepsie, 212 U.S. 558 (1908)	14
Pure Oil Co. v. Snipes, 293 F.2d 60 (CCA 5, 1961)	6, 11
Rodrigue v. Aetna Casualty & Surety Co., 395 U.S. 352, 23 L.Ed.2d 360 (1969)	1, 2, 5, 6, 7, 9, 11, 12, 13, 14, 16, 17
Roper v. Monroe Grocer Co., 171 La. 181, 129 So. 811 (1930)	4
Seas Shipping Co. v. Sieracki, 328 U.S. 85, 90 L.Ed. 1099 (1946)	16
Vaughan v. Atkinson, 369 U.S. 527, 8 L.Ed.2d 88 (1962)	16

IV AUTHORITIES (Continued)

	Page
Washington v. Dawson & Co., 264 U.S. 219, 68 L.Ed. 646 (1924)	13
Weinstein v. Eastern Airlines, Inc., 316 F.2d 758 (CCA 3, 1963)	15
Constitution:	
Article 3, Section 2	17
Statutes:	
Admiralty Extension Act, 46 U.S.C.A., sec. 740	15
Jones Act, 46 U.S.C.A., secs. 688, <i>et seq.</i>	12
Outer Continental Shelf Lands Act, 43 U.S.C.A., secs. 1333, <i>et seq.</i>	5
Ship Mortgage Act, 46 U.S.C.A., secs. 911, <i>et seq.</i>	13
Other:	
Federal Rules of Civ. Procedure, Rule 8(c)	8
Louisiana Revised Civil Code of 1870:	
Article 2315	3, 4
Article 3536	3, 4, 7
Wiswall, "The Development of Admiralty Jurisdiction & Practice Since 1800"	11

IN THE
SUPREME COURT OF THE UNITED STATES

No. 70-11

CHEVRON OIL COMPANY,
Petitioner,
versus

GAINES TED HUSON,
Respondent.

On Certiorari to the United States Court of Appeals,
Fifth Circuit

RESPONDENT'S BRIEF ON THE MERITS.

MAY IT PLEASE THE COURT:

SUMMARY OF ARGUMENT

I.

Assuming that *Rodrigue v. Aetna Casualty & Surety Co.*¹ requires federal courts to adjudicate all aspects of tort claims emanating from high seas platform injuries according the laws of "adjacent states," the federal courts are not obliged to apply state procedural laws in determining the timeliness of such claims.

¹395 U. S. 352, 23 L.Ed 2d 360 (1969).

A.

Even if state procedural law governing timeliness of actions must be applied to high seas platform injury claims, such application should not operate so as to bar actions that were timely when filed.

II.

For a claim to be time-barred due to *laches* there must have been both an *inexcusable delay* in its assertion and *prejudice* to the opposing party from such delay; if either element is missing, there is no *laches*, as a matter of law.

III.

While Congress has wide latitude in altering and amending the maritime law of the United States, it cannot encroach upon the admiralty and maritime jurisdiction of this Court either by eliminating therefrom matters clearly of admiralty cognizance or by applying diverse state laws to such matters; to the extent that *Rodrigue* condones and furthers such Congressional action, the decision should be overruled.

ARGUMENT

I.

A Statute Of Limitations² That Merely Bars A Remedy But Does Not Extinguish The Right Is Procedural In Nature And, Therefore, Is Not Binding In A Forum Other Than The One From Which The Right Emanates

Petitioner asserts that "the substantive law of the State of Louisiana was applicable to respondent's claims" and "the right to recover against a tort-feasor must be exercised by a claimant within one year; such limitation of action is a period of *peremption*."³ [Emphasis added]

A review of petitioner's authorities, however, will quickly disclose that they relate to *death* cases, rather than to claims for personal injuries. The District Court did not dismiss this action because of the time limitation set forth in Article 2315 of the Louisiana Civil Code. Its judgment reads, in pertinent part, as follows:

"... plaintiff's action is now prescribed (time-barred) pursuant to the provisions of LSA-C.C. art. 3536."⁴

Therefore, when we inquire as to the nature of the statute of limitations involved here, we must consider the Codal Article applicable to *this* case.

²Denominated "prescription" in Louisiana.

³Petitioner's Brief on the Merits, pp. 10-14.

⁴Appen. p. 152

Article 3536 of the Louisiana Civil Code⁵ is entirely separate and distinct from Article 2315.⁶ Article 3536 is a "*procedural restraint which bars the remedy, but does not extinguish the right.*"⁷ Whereas, the time limitation contained in Article 2315 is an "integral part" of the right of action established by that Article for *wrongful death only*.⁸

It is true that after expiration of one year from the death, the survivors' action *per se* expires and may not be asserted in any forum. However, a right of action "prescribed" by Article 3536 is *not* extinguished by mere lapse of time; and, if it be asserted in other than a "Louisiana" forum, the timeliness of the claim will be determined by the law of that other forum.⁹

Were this a diversity-of-citizenship case, the District Court would have been obliged to apply Louisiana's Article 3536.¹⁰ But, respondent did not invoke federal

⁵Providing: "The following actions are also prescribed by one year: That for injurious words, whether verbal or written, and that for damages caused by animals, or resulting from offenses (willful injuries) or quasi offenses (torts)."

⁶Providing in pertinent part: "The right to recover all other damages caused by an offense or quasi offense, if the injured person dies, shall survive for a period of one year from the death of the deceased. . ." [Emphasis added.]

⁷Fidelity & Cas. Co. of N.Y. v. C/B Mr. Kim, 345 F.2d 45, 50 (CCA 5, 1965).

⁸Compare Kenney v. Trinidad Corp., 349 F.2d 832 (CCA 5, 1965) with Page v. Cameron Iron Works, Inc., 259 F.2d 420 (CCA 5, 1958); see also, Mejia v. U. S., 152 F.2d 686, 688 (CCA 5, 1946).

⁹Roper v. Monroe Grocer Co., 171 La. 181, 129 So. 811 (1930) and Newman v. Eldridge, 107 La. 315, 31 So. 688 (1902) clearly so hold.

¹⁰See Kozan v. Comstock, 270 F.2d 839 (CCA 5, 1959).

jurisdiction on that ground. His action is brought under federal law and, unquestionably, in a federal forum.¹¹

It is the *substantive* law of Louisiana that "prescription is *procedural* and the law of the forum governs the timeliness of the action."¹² If, therefore, the Lands Act¹³ and *Rodrigue* mandate application of Louisiana substantive law here, the law is that the period of limitation of the federal forum governs the timeliness of this suit.

Since there is no federal statute of limitations specifically applicable here, we submit that the Court of Appeals was at liberty to fashion its own rule, at least for this Circuit, and that, in so doing, it has *not* "decided a question of law in conflict with the applicable decision of this Court in *Rodrigue*," as petitioner contends.¹⁴

Rodrigue held only that Louisiana's wrongful death statute governed the substantive rights of wrongful death claimants. That statute contains a "time" provision following which the rights themselves are extinguished. The instant case, however, is a personal injury action. The time specified for bringing such a claim in Louisiana is provided in Article 3536, a codal article held repeatedly *not* to extinguish a claim and

¹¹43 U.S.C.A. §1333(b): "The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the outer Continental Shelf. . ."

¹²*Supra*, notes 8, 9 and 10.

¹³Outer Continental Shelf Lands Act, 43 U.S.C.A. § 1333, *et seq.*

¹⁴Petitioner's Brief on the Merits, p. 13.

to be procedural only in nature. There is no sound reason to extend the holding in *Rodrigue* beyond its facts and, therefore, it should not serve as basis for dismissal of respondent's lawsuit.

A.

Assuming, *arguendo*, that *Rodrigue* does make applicable all of the diverse state statutes of limitations, of whatever character, we submit, that it is manifestly unfair to give that application retrospective effect, in view of the pre-*Rodrigue* jurisprudence¹⁵ and the circumstances of this case.

Respondent was allegedly injured in December of 1965¹⁶ and he was allowed to return to work at a somewhat lighter position in May of 1966.¹⁷ He continued at this job for about a year¹⁸ and it was not until he attempted to return to the duties of his former position in April of 1967 that he experienced further significant back difficulty.¹⁹ This action was instituted in January of 1968, less than a year from the date of the exacerbation of respondent's complaints.

During the interval from respondent's injury until he did sue, there was no "law" and no court apprising

¹⁵Pure Oil Co. v. Snipes, 293 F.2d 60 (CCA 5, 1961); Movable Off-shore Co. v. Oursley, 346 F.2d 870 (CCA 5, 1965); Loffland Bros. Co. v. Roberts, 386 F.2d 540 (CCA 5, 1967); Dore v. Link Belt Co., 391 F.2d 671 (CCA 5, 1968).

¹⁶Appen., p. 56.

¹⁷Appen., p. 58.

¹⁸Appen., pp. 34-36.

¹⁹Ibid.

him or his counsel that suit must be filed within one year from the date of his initial injury. To the contrary, "the law" specified no fixed time²⁰ within which he had to act or be forever barred, as the District Court ultimately held.

We deem it significant also that, even until now, petitioner has not asserted that this claim is "stale" or that it should be dismissed for *laches*.²¹ This is true, even though under *Snipes*, *Oursley* and *Loffland Bros*,²² "the law" at all times recognized the existence of *laches* as a defense.

In dismissing this action for respondent's failure to have instituted it sooner, when he had no legal or practical compulsion to do so, we submit that the District Court has reached a harsh and unjust result. That Court, understandably, felt obliged to apply *Rodrigue* literally to this case; but, there is no need for this Court so to feel. It has said:

"Where a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity."²³

²⁰*Supra*, note 14; and see *Flowers v. Savannah Machine & Foundry Co.*, 310 F.2d 135 (CCA 5, 1962).

²¹Petitioner's Motion to Dismiss or For Summary Judgment in the District Court is predicated solely on Article 3536 of the Louisiana Civil Code. Appen., pp. 113, *et seq.*

²²*Supra*, note 14.

²³*Cipriano v. City of Houma*, 395 U.S. 701, 23 L.Ed. 2d 647 (1969). See also: *Linkletter v. Walker*, 381 U.S. 618, 14 L.Ed. 2d 601 (1965).

Such a holding, we submit, is merited in this case, as well as the others doubtlessly pending in the Fifth Circuit. Therefore, even if it is to be the law that "prescriptions" of the adjacent States must be applied to high seas platform injury actions, we respectfully urge that there be excepted from such requirement all actions instituted prior to the *Rodrigue* decision.

II.

Laches Is An Affirmative Defense With Two Essential Elements That Must Be Pleaded And Proved By The Party Who Asserts The Doctrine

In the event this Court agrees that *laches* is the appropriate doctrine by which to determine the timeliness of this action, *no* "error was committed by the Court of Appeals for the Fifth Circuit," as suggested by petitioner.^{23A}

The Federal Rules of Civil Procedure, as amended, require that:

"In pleading to a preceding pleading, a party shall set forth affirmatively ... laches ... and any other matter constituting an avoidance or affirmative defense."²⁴

Careful examination of the Appendix prepared and presented by petitioner fails to disclose the mention

^{23A}Petitioner's Brief on the Merits, p. 15.

²⁴Rule 8(c), F.R.C.P.

of *laches*, except in the opinion of the Court of Appeals²⁵ and in the Statement of Issues that petitioner intends to present in *this* Honorable Court.²⁶

It has been mentioned previously that petitioner has never suggested, by pleading or otherwise, that this action should be dismissed because it was a "stale" claim or that petitioner was in some way "prejudiced" because the suit was not sooner filed.

Petitioner is presumed to have known that *laches* was at all times prior to *Rodrigue* available as a defense to this lawsuit, provided, of course, it could be established by proof. Yet, this defense was not urged.

The Court of Appeals, on the record before it, held that respondent was *not* guilty of *laches* and petitioner now complains of that ruling.

Based on the record, the Court of Appeals was entirely justified in holding that there was no *laches* on respondent's part.

With respect to that defense, it has been said:

"The inquiry on *laches* partakes of two parts —
 (1) the excuse for the delay [in filing suit] and
 (2) prejudice to the pursued."²⁷

²⁵Appen., pp. 194, *et seq.*

²⁶Appen., p. 212. Can it be that petitioner is guilty of *laches*?

²⁷*Fidelity & Cas. Co. of N.Y. v. C/B Mr. Kimp*, 345 F.2d 45, 50 (CCA 5, 1965).

Stress is laid upon the fact that *both* of these elements are *essential*.²⁸ Neither is present in this case.

As has been set forth heretofore, respondent was understandably not anxious to sue petitioner as long as he could continue working; there was no "law" requiring that he sue before he did. But, more importantly, once petitioner was sued, it averred no prejudice, for, indeed, there was none. The Appendix filed by petitioner amply demonstrates that petitioner was fully able to prepare its case on the merits. Factually, therefore, as the Court of Appeals correctly concluded, there was a "complete lack of any prejudice,"²⁹ hence, there could be no laches, as a matter of law³⁰ and the holding that the action was "timely filed" should not be disturbed.

III.

A Personal Injury Occurring On Or Over The High Seas Is One Within The Admiralty And Maritime Jurisdiction Of The United States

As an alternative, in the event that the judgment of the Court of Appeals is not sustainable for the reasons heretofore set forth, respondent suggests that it

²⁸Larrios v. Victory Carriers, Inc., 316 F.2d 63 (CCA 2, 1963); Akers v. States Marine Lines, Inc., 344 F.2d 217 (CCA 5, 1965); Crews v. Arundel Corp., 386 F.2d 528 (CCA 5, 1967); Fidelity & Cas. Co. of N.Y. v. C/B Mr. Kim, *supra*, note 27.

²⁹Appen., p. 206.

³⁰Larrios v. Victory Carriers, Inc.; Akers v. States Marine Lines, Inc.; Crews v. Arundel Corp.; and Fidelity & Cas. Co. of N.Y. v. C/B Mr. Kim, all *supra*.

is appropriate to re-examine the *Rodrigue* decision, itself.

No attempt will be made to reiterate the legislative proceedings attending passage of the Lands Act in the hope of discerning a different Congressional intention than was ascribed to Congress in *Rodrigue*. The Court of Appeals' opinion³¹ adequately demonstrates that obliteration of all maritime law principles aboard these high seas platforms (except to the extent that the Extension of Admiralty Act might make them applicable)³² will fall far short of affording to the high seas oil worker the high degree of protection Congress obviously thought he should receive.

It is acknowledged also that some legislators closely associated with formulation of the Lands Act believed that admiralty was not equal to the task of governing rights and remedies of personal injury litigants. Fortunately, however, "expression by the legislature of an erroneous opinion concerning the law does not alter it."³³ History tells us unmistakably that tort litigation had been quite adequately adjudicated by admiralty courts for centuries before the Lands Act was enacted³⁴ and we know that such was also the case for fifteen years following the Act's passage.³⁵

³¹Appen. p., 195.

³²*Rodrigue v. Aetna* [footnote 12], *supra*, note 1.

³³*Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149, 64 L.Ed. 834, 840 (1920).

³⁴*DeLovio v. Boit*, 7 Fed.Cas. 418 (D.Mass., 1815); see also, Wiswall, "The Development of Admiralty Jurisdiction, & Practice Since 1800," p. 10.

³⁵*Pure Oil Co. v. Snipes*; *Movable Offshore Co. v. Oursley*; and *Loffland Bros., Co. v. Roberts*, *supra*, note 15.

It may be assumed further that Congress, by the Lands Act, purposely sought to "eschew altogether" the application of all admiralty law aboard these high seas structures.³⁶

But, the question we would respectfully pose is: could Congress constitutionally isolate and remove this entire area from the maritime jurisdiction of the United States?

Forty-seven years ago, when passing upon the validity of the Jones Act,³⁷ this Court observed:

"When all is considered, ... there is no room to doubt that the power of Congress extends to the entire subject [of admiralty and maritime jurisdiction], and permits of the exercise of a wide discretion. *But there are limitations which have come to be well recognized. One is that there are boundaries to the maritime law and admiralty jurisdiction which inhere in those subjects and cannot be altered by legislation, as by excluding a thing falling clearly within them, or including a thing falling clearly without. Another is that the spirit and purpose of the constitutional provision require that the enactments — when not relating to matters whose existence or influence is confined to a more restricted field [citations omitted] — shall be coextensive and operate*

³⁶Rodrigue v. Aetna, *supra*, note 1, at 395 U.S. p. 355.

³⁷46 U.S.C.A. §688, *et seq.*

uniformly in the whole of the United States."³⁸
 [Emphasis added.]

We would ask leave to question therefore, whether the Lands Act, as interpreted by *Rodrigue*, does not exceed the "limitation" placed on Congress, by "excluding a thing," to-wit personal injuries occurring on the high seas, from admiralty and maritime jurisdiction, when for centuries such "things" have fallen "clearly within" that jurisdiction.³⁹

In upholding the Ship Mortgage Act⁴⁰ against an attack on its constitutionality, while recognizing Congress' wide latitude in altering the maritime law, this Court again cautioned:

"But in amending and revising the maritime law, the Congress necessarily acts within a

³⁸*Panama R.R. Co. v. Johnson*, 264 U.S. 375, 386, 68 L.Ed. 748, 752 (1924).

³⁹Another question that might be asked is: Whether, by "eschewing altogether" maritime law for all high seas platforms throughout the entire outer Continental Shelf and substituting in its stead the diverse tort laws of the several "adjacent" states, Congress has contravened the requirement of "harmony and uniformity" that scuttled its two attempts to extend state workmen's compensation laws to a geographical area much less "traditional" to admiralty than the high seas? *Knickerbocker Ice Co. v. Stewart*, *supra*, note 33; *Washington v. Dawson & Co.*, 264 U.S. 219, 68 L.Ed. 646 (1924). Apparently, not wishing to run afoul of *Knickerbocker* and *Dawson & Co.*, Congress specifically extended the Longshoremen's Act which is unquestionably an act emanating from the constitutional grant of admiralty and maritime jurisdiction. *Crowell v. Benson*, 285 U.S. 22, 76 L.Ed. 598 (1932).

⁴⁰46 U.S.C.A. §911, *et seq.*

sphere restricted by the concept of the admiralty and maritime jurisdiction."⁴¹

Therefore, if "the concept of admiralty and maritime jurisdiction" of torts did encompass these high seas platforms, despite a contrary Congressional intention, we submit that the Lands Act could not constitutionally have ousted the admiralty or "eschewed" application of maritime law principles to torts occurring on these structures at sea.⁴²

We recognize that, in *Rodrigue*, the Court expressed doubt that "traditional admiralty principles" would apply to the platforms. But, we respectfully submit that the basis for the Court's doubt is no longer secure, being founded principally upon pre-Admiralty Extension Act⁴³ property damage jurisprudence⁴⁴ that, at best today, is only historical evidence of the feud between Lord Coke and the British Admiral.⁴⁵

⁴¹*Detroit Trust Co. v. Str. Thomas Barlum*, 293 U. S. 21, 79 L.Ed. 176, 186 (1934).

⁴²*Panama R. R. Co. v. Johnson*, *Crowell v. Benson* and *Detroit Trust Co. v. Str. Thomas Barlum*, *supra*, notes 38, 39 and 41.

⁴³46 U.S.C.A. § 740.

⁴⁴*Phoenix Construction Co. v. Str. Poughkeepsie*, 212 U.S. 558 (1908). That case seems indistinguishable from *Phila., W. & B. R. Co. v. Phila. & H. Towboat Co.*, 64 U. S. 209 (1860) except on the basis of whose ox was being gored. In *Phila. Towboat Co.*, the Court accepted admiralty jurisdiction for an owner whose vessel was holed by river piling, while, in *The Poughkeepsie*, admiralty jurisdiction was declined to a river piling owner whose property was damaged by a vessel.

⁴⁵Well documented in *DeLovio v. Bqit*, *supra*, note 34.

This Court has wisely recognized that:

"The framers of the Constitution did not contemplate that the maritime law should remain unalterable."⁴⁶

* * * *

"We have had abundant reason to realize that our experience and new conditions give rise to new conceptions of maritime concerns. These may require that former criteria of jurisdiction be abandoned, as, for example, they were abandoned in discarding the doctrine that the admiralty jurisdiction was limited to tidewaters."⁴⁷

Congress, itself, has "abandoned" *The Poughkeepsie*⁴⁸ "criteria" via the Admiralty Extension Act.⁴⁹ "New conceptions of maritime concerns" have now embraced aircraft disasters at sea,⁵⁰ and even in port.⁵¹ Indeed, whenever human suffering has cried out for relief, the admiralty and maritime jurisdiction

⁴⁶Detroit Trust Co. v. Str. Thomas Barlum, *supra*, note 41.

⁴⁷*Ibid.* at 79 L.Ed. p. 190.

⁴⁸212 U.S. 538 (1908)

⁴⁹46 U.S.C.A. § 740

⁵⁰D'Aleman v. Pan Am. World Airways, Inc., 259 F.2d 493 (CCA 2, 1958); Noel v. Linea Aeropostal Venezolana, 247 F.2d 677 (CCA 2, 1957); Higa v. Transocean Airlines, Inc., 230 F.2d 780 (CCA 9, 1955); National Airlines, Inc. v. Stiles, 268 F.2d 400 (CCA 5, 1959).

⁵¹Weinstein v. Eastern Airlines, Inc., 316 F.2d 758 (CCA 3, 1963).

has responded without hesitation through this Honorable Court.⁵²

We submit that admiralty and maritime tort jurisdiction should and does encompass these high seas structures and that a "vessel" is not indispensable to that jurisdiction.

"Every species of tort, however occurring, and whether on board a vessel or not, if upon the high seas or navigable waters, is of admiralty cognizance."⁵³

In the light of these principles and in recognition of the fact that the very existence of the structures involved in this case is necessitated by the sea, we urge, with all deference, that *Rodrigue* be re-examined and overruled. We suggest that it will do no violence to repudiate the decision. "It is a recent one. It has created no rule of property around which vested interests have clustered. It affects solely matters of a transitory nature. On the other hand, it affects seriously the lives of men, women and children, and the general welfare. *Stare decisis* is ordinarily a wise rule

⁵²*Sea Shipping Co. v. Sieracki*, 328 U.S. 85, 90 L.Ed. 1099 (1946), affording longshoremen protection against unseaworthiness; *Vaughan v. Atkinson*, 369 U.S. 527, 8 L.Ed.2d 88 (1962), creating sanctions for unjustified refusal to provide maintenance and cure to deserving seamen; and *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 26 L.Ed.2d 339 (1970), recognizing wrongful death action for breach of maritime duties.

⁵³*Hough v. Western Transp. Co. [The Plymouth]*, 70 U.S. 20, 18 L.Ed. 125, 128 (1866).

of action. But, it is not a universal, inexorable command."⁵⁴

In conclusion, we respectfully suggest that Article 3, § 2, of the Constitution bestows upon this Court an admiralty and maritime jurisdiction amply broad enough to encompass high seas occurrences of the nature involved in this case. By interpreting the Lands Act as mandating application of diverse state tort laws to personal injuries occurring at sea, *Rodrigue* imputes to Congress a course of action that exceeds its authority and improperly encroaches upon the constitutional prerogatives of this Honorable Court in matters maritime.

Respectfully submitted,

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⁵⁴Brandeis, J., dissenting in *Washington v. Dawson & Co.*, 68 L. Ed. at pp. 657-658.

CERTIFICATE OF SERVICE

I, the undersigned member of the Bar of this Court, do hereby certify that two copies of the above and foregoing Brief on the Merits for Respondent have been served upon Counsel for the Petitioner by mailing the same, postage pre-paid at New Orleans, Louisiana, to Lloyd C. Melancon, Esq., 720 Hibernia Bank Building, New Orleans, Louisiana 70112, this ____ day of August, 1971.

Samuel C. Gainsburgh



Syllabus

CHEVRON OIL CO. v. HUSON

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

No. 70-11. Argued October 20, 1971—Decided December 6, 1971

Respondent was injured in December 1965 while working on petitioner's artificial island drilling rig, located on the Outer Continental Shelf off the Louisiana coast. Allegedly, not until many months later were the injuries discovered to be serious. In January 1968 respondent brought suit for damages against petitioner in federal district court. The District Court, relying on *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U. S. 352 (1969), held that Louisiana's one-year limitation on personal injury actions applied rather than the admiralty laches doctrine, and granted petitioner's motion for summary judgment. *Rodrigue* had held that state law and not admiralty law applied to fixed structures on the Outer Continental Shelf under the Outer Continental Shelf Lands Act (hereinafter Lands Act), and extended to that area as federal laws the laws of the adjacent State "to the extent that they are applicable and not inconsistent" with federal laws. Respondent argued on appeal that in view of pre-*Rodrigue* jurisprudence making admiralty law (including the laches doctrine) applicable, it would be unfair to give that decision retrospective effect. The Court of Appeals, not reaching that argument, reversed, holding that Louisiana's "prescriptive" time limitation, which barred the remedy but did not extinguish the right to recovery, was not binding outside a Louisiana forum. Consequently, the court concluded that the time limitation was not "applicable" of its own force and was "inconsistent" with the admiralty laches doctrine, which though not directly applicable by virtue of *Rodrigue* was applicable as a matter of federal common law. *Held*:

1. The Lands Act, as interpreted in *Rodrigue*, requires that a State's statute of limitations be applied to actions for personal injuries occurring on fixed structures on the Outer Continental Shelf. The fact that the Louisiana law is "prescriptive" does not make it inapplicable as federal law under the Lands Act, and a

federal court may not apply a laches test to preclude application of the state time limitation. Pp. 100-105.

2. The Louisiana one-year statute of limitations should not, however, bar respondent's action here since retroactive application of that statute under *Rodrigue* would deprive respondent of any remedy at all on the basis of the unforeseeable superseding legal doctrine of that decision. Pp. 105-109.

430 F. 2d 27, affirmed.

STEWART, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, WHITE, MARSHALL, and BLACKMUN, JJ., joined. DOUGLAS, J., filed a separate opinion, *post*, p. 109.

Lloyd C. Melancon argued the cause and filed a brief for petitioner.

Samuel C. Gainsburgh argued the cause and filed a brief for respondent.

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondent, Gaines Ted Huson, suffered a back injury while working on an artificial island drilling rig owned and operated by the petitioner, Chevron Oil Co., and located on the Outer Continental Shelf off the Gulf Coast of Louisiana. The injury occurred in December 1965. Allegedly, it was not until many months later that the injury was discovered to be a serious one. In January 1968 the respondent brought suit for damages against the petitioner in federal district court. The respondent's delay in suing the petitioner ultimately brought his case to this Court.

The issue presented is whether the respondent's action is time barred and, more particularly, whether state or federal law determines the timeliness of the action. That issue must be resolved under the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U. S. C. § 1331 *et seq.* (hereinafter "Lands Act"), which governs injuries occurring

on fixed structures on the Outer Continental Shelf. When this lawsuit was initiated, there was a line of federal court decisions interpreting the Lands Act to make general admiralty law, including the equitable doctrine of laches, applicable to personal injury suits such as the respondent's.¹ The petitioner did not question the timeliness of the action as a matter of laches. While pretrial discovery proceedings were still under way, however, this Court announced its decision in *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U. S. 352. That decision entirely changed the complexion of this case. For it established that the Lands Act does not make admiralty law applicable to actions such as this one. Relying on *Rodrigue*, the District Court held that Louisiana's one-year limitation on personal injury actions, rather than the admiralty doctrine of laches, must govern this case. It concluded, therefore, that the respondent's action was time barred and granted summary judgment for the petitioner.²

On appeal, the respondent argued that *Rodrigue* should not be applied retroactively to bar actions filed before the date of its announcement.³ But the Court of Appeals declined to reach that question. Instead, it held that the interpretation of the Lands Act in *Rodrigue* does not compel application of the state statute of limitations or prevent application of the admiralty doctrine of laches. It concluded that the doctrine of laches should have been applied by the District Court and, therefore, reversed that court's judgment and remanded the case for trial. 430 F. 2d 27. We granted certiorari to consider the Court of Appeals' construction of the Lands

¹ See *infra*, at 107.

² The decision of the District Court is unreported (ED La., Civil Action No. 68-19D).

³ The respondent has made the same argument to this Court.

Act and of *Rodrigue*. 402 U. S. 942. We hold that the Lands Act, as interpreted in *Rodrigue*, requires that the state statute of limitations be applied to personal injury actions. We affirm the judgment of the Court of Appeals, however, on the ground that *Rodrigue* should not be invoked to require application of the Louisiana time limitation retroactively to this case.

I

The Lands Act makes the Outer Continental Shelf, including fixed structures thereon, an area of exclusive federal jurisdiction, 43 U. S. C. § 1333 (a)(1). The Act extends the laws of the United States to this area, 43 U. S. C. § 1333 (a)(1), and provides that the laws of the adjacent State shall also apply "[t]o the extent that they are applicable and not inconsistent" with applicable federal laws, 43 U. S. C. § 1333 (a)(2).⁴ To the extent

⁴ The full text of § 1333 (a)(1) and § 1333 (a)(2) reads:

"(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

"(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of August 7, 1953 are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending

that a comprehensive body of federal law is applicable under § 1333 (a)(1), state law "inconsistent" with that law would be inapplicable under § 1333 (a)(2).

In *Rodrigue*, we clarified the scope of application of federal law and state law under § 1333 (a)(1) and § 1333 (a)(2). By rejecting the view that comprehensive admiralty law remedies apply under § 1333 (a)(1), we recognized that there exists a substantial "gap" in federal law. Thus, state law remedies are not "inconsistent" with applicable federal law. Accordingly, we held that, in order to provide a remedy for wrongful death, the "gap" must be filled with the applicable body of state law under § 1333 (a)(2).

The Court of Appeals acknowledged that *Rodrigue* clearly establishes that the remedy for personal injury, as for wrongful death, cannot be derived from admiralty law but must be governed by the law of the adjacent State, Louisiana. But the Court held that Louisiana's time limitation on personal injury actions need not be applied with the substantive remedy. It supported this holding by reference to the terms of § 1333 (a)(2) that limit the application of state law under the Lands Act. The Louisiana time limitation, the Court of Appeals reasoned, is not "applicable" of its own force and is "inconsistent" with the admiralty doctrine of laches. The court held that, despite the holding in *Rodrigue*, the laches doctrine is applicable as a matter of federal common law. We must disagree.

The Court of Appeals did not suggest that state statutes of limitations are *per se* inapplicable under § 1333 (a)(2). Rather, it focused on the peculiar nature of

seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf."

the Louisiana time limitation on personal injury actions found in Art. 3536, La. Civ. Code Ann. Article 3536 provides that personal injury actions shall be "prescribed" by one year. The Court of Appeals attached much significance to the fact that Art. 3536 "prescribes," rather than "perempts," such actions. Under Louisiana law, "prescription," unlike "peremption," bars the remedy but does not formally extinguish the right to recovery. See *Page v. Cameron Iron Works*, 259 F. 2d 420, 422-424; *Istre v. Diamond M. Drilling Co.*, 226 So. 2d 779, 794-795 (La. App.); *Succession of Pizzillo*, 223 La. 328, 335, 65 So. 2d 783, 786. This characterization has importance under principles of conflicts of law. It has been held, as a matter of Louisiana conflicts law, that mere "prescriptive" time limitations are not binding outside their own forum. See *Fidelity & Casualty Co. v. C/B Mr. Kim*, 345 F. 2d 45, 50; *Kozan v. Comstock*, 270 F. 2d 839, 841; *Istre v. Diamond M. Drilling Co.*, *supra*, at 795. Reasoning from this principle of conflicts law, the Court of Appeals concluded that the "prescriptive" limitation is not "applicable" in a federal court adjudicating a claim under the Lands Act.

We hold, however, that the "prescriptive" nature of Art. 3536 does not undercut its applicability under the Lands Act. Under § 1333 (a)(2) of the Act, "[s]tate law bec[omes] federal law federally enforced." *Rodrigue v. Aetna Casualty & Surety Co.*, *supra*, at 365. It was the intent of Congress, expressed in the Senate Committee Report, in the Conference Report, and on the floor of the Senate, that state laws be "adopted" or "enacted" as federal law. See *id.*, at 357-358. Thus a federal court applying Louisiana law under § 1333 (a)(2) of the Lands Act is applying it as federal law—as the law of the federal forum. Since the federal court is not, then, applying the law of another forum in

the usual sense, ordinary conflict of laws principles have no relevance. Article 3536 is "applicable" in federal court under the Lands Act just as it would be applicable in a Louisiana court.⁵

The policies underlying the federal absorption of state law in the Lands Act make this result particularly obvious. As we pointed out in *Rodrigue*, Congress recognized that "the Federal Code was never designed to be a complete body of law in and of itself" and thus that a comprehensive body of state law was needed. *Id.*, at 358, 361. Congress also recognized that the "special relationship between the men working on these artificial islands and the adjacent shore to which they commute" favored application of state law with which these men and their attorneys would be familiar. *Id.*, at 365; see *id.*, at 363. If Congress' goal was to provide a comprehensive and familiar body of law, it would defeat that goal to apply only certain aspects of a state personal injury remedy in federal court. A state time limitation upon a remedy is coordinated with the substance of the remedy and is no less applicable under the Lands Act.⁶

The application of Louisiana's Art. 3536 is, of course, subject to the absence of "inconsistent" and applicable federal law. The Court of Appeals acknowledged that *Rodrigue* forecloses direct applicability of the "inconsistent" laches doctrine through admiralty law. But, by applying laches as a matter of federal common law, it

⁵ This is not to imply that a federal court adjudicating a claim under state law as absorbed in the Lands Act must function as it would in a diversity case. See *Erie R. Co. v. Tompkins*, 304 U. S. 64; *Guaranty Trust Co. v. York*, 326 U. S. 99; *Levinson v. Deupree*, 345 U. S. 648, 651. We hold only that the state statute of limitations is part of the law to be applied in federal court as it would be part of the law to be applied in a state court.

⁶ Here we are not dealing with mere "housekeeping rules" embodied in state law. Cf. *Hanna v. Plumer*, 380 U. S. 460, 473.

sought to reintroduce the doctrine through a back door.⁷ This approach subverts the congressional intent documented in *Rodrigue, id.*, at 359-366, that admiralty doctrines should *not* apply under the Lands Act.

Moreover, the Court of Appeals' approach amounts to an inappropriate creation of federal common law. Even when a federal statute creates a wholly federal right but specifies no particular statute of limitations to govern actions under the right, the general rule is to apply the state statute of limitations for analogous types of actions. See *Auto Workers v. Hoosier Corp.*, 383 U. S. 696; *Cape v. Anderson*, 331 U. S. 461; *Campbell v. Haverhill*, 155 U. S. 610; Note, Federal Statutes Without Limitations Provisions, 53 Col. L. Rev. 68 (1953). A special federal statute of limitations is created, as a matter of federal common law, only when the need for uniformity is particularly great or when the nature of the federal right demands a particular sort of statute of limitations. See *Holmberg v. Armbrecht*, 327 U. S. 392; *McAllister v. Magnolia Petroleum Co.*, 357 U. S. 221. But, under the Lands Act, there is not even such limited freedom to create a federal statute of limitations, for Congress specified that a comprehensive body of state law should be adopted by the federal courts in the absence of existing federal law. Congress specifically rejected national uniformity and specifically provided for the application of state remedies which demand state, not federal, statutes of limitation. Thus, Congress made clear provision for filling in the "gaps" in federal law; it did not intend that federal

⁷ The Court of Appeals justified its creation of federal common law in this instance by suggesting that personal injury actions under the Lands Act are in a "quasi maritime area which is traditionally imbued with the laches doctrine and which presents a strong federal urge toward uniformity." 430 F. 2d, at 32.

courts fill in those "gaps" themselves by creating new federal common law.⁸

II

Although we hold that Louisiana's one-year statute of limitations must be applied under the Lands Act as interpreted in *Rodrigue*, we do not blind ourselves to the fact that this is, in relevant respect, a pre-*Rodrigue* case. The respondent's injury occurred more than three years before the announcement of our decision in *Rodrigue*. He instituted the present lawsuit more than one year before *Rodrigue*. Yet, if the Louisiana statute of limitations controls in this case, his action was time barred more than two years before *Rodrigue*. In these circumstances, we must consider the respondent's argument that the state statute of limitations should be given nonretroactive application under *Rodrigue*.

In recent years, the nonretroactive application of judicial decisions has been most conspicuously considered

⁸Contrary to the suggestion by Mr. Justice Douglas, our holding today is consonant with *Levinson v. Deupree*, *supra*, n. 5. Since *Levinson* involved a federal court's obligation to adopt state procedural rules in an admiralty action, it has very limited relevance to the instant case, which involves an action under a statute which ousts admiralty law and specifically directs that state law shall be adopted as federal law. Moreover, *Levinson* held only that state "procedural niceties relating to amendments of pleadings" need not be applied by federal admiralty courts, and the opinion emphasized that it was not dealing with an important part of the state action, such as a statute of limitations. 345 U. S., at 651-652. As pointed out above, our holding today does not extend to such state "house-keeping rules." See n. 6; *supra*.

Richards v. United States, 369 U. S. 1, also referred to by Mr. Justice Douglas, held that, under the Federal Tort Claims Act, a federal court must apply "the whole law of the State where the act or omission occurred." *Id.*, at 11. Insofar as *Richards* bears on the present case, it supports our holding that federal courts should not create interstitial federal common law when the Congress has directed that a whole body of state law shall apply.

in the area of the criminal process: *E. g.*, *Mackey v. United States*, 401 U. S. 667; *Hill v. California*, 401 U. S. 797; *Desist v. United States*, 394 U. S. 244; *Linkletter v. Walker*, 381 U. S. 618. But the problem is by no means limited to that area. The earliest instances of nonretroactivity in the decisions of this Court—more than a century ago—came in cases of nonconstitutional, noncriminal state law. *E. g.*, *Gelpcke v. City of Dubuque*, 1 Wall. 175; *Havemeyer v. Iowa County*, 3 Wall. 294; *Railroad Co. v. McClure*, 10 Wall. 511.⁹ It was in a noncriminal case that we first held that a state court may apply its decisions prospectively. *Great Northern R. Co. v. Sunburst Oil & Refining Co.*, 287 U. S. 358. And, in the last few decades, we have recognized the doctrine of nonretroactivity outside the criminal area many times, in both constitutional and nonconstitutional cases. *Cipriano v. City of Houma*, 395 U. S. 701; *Allen v. State Board of Elections*, 393 U. S. 544; *Hanover Shoe v. United Shoe Machinery Corp.*, 392 U. S. 481; *Simpson v. Union Oil Co.*, 377 U. S. 13; *England v. State Board of Medical Examiners*, 375 U. S. 411; *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U. S. 371.

In our cases dealing with the nonretroactivity question, we have generally considered three separate factors. First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, see, *e. g.*, *Hanover Shoe v. United Shoe Machinery Corp.*, *supra*, at 496, or by deciding an issue of first impression whose resolution was not clearly foreshadowed, see, *e. g.*, *Allen v. State Board of Elections*, *supra*, at 572. Second, it has been stressed that “we must . . . weigh the merits

⁹ These cases were decided in the era before *Erie R. Co. v. Tompkins*, *supra*, n. 5. The first case involving nonretroactive application of state law concerned interpretation of the Mississippi Constitution. *Rowan v. Runnels*, 5 How. 134.

and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation." *Linkletter v. Walker*, *supra*, at 629. Finally, we have weighed the inequity imposed by retroactive application, for "[w]here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity." *Cipriano v. City of Houma*, *supra*, at 706.

Upon consideration of each of these factors, we conclude that the Louisiana one-year statute of limitations should not be applied retroactively in the present case. *Rodrigue* was not only a case of first impression in this Court under the Lands Act, but it also effectively overruled a long line of decisions by the Court of Appeals for the Fifth Circuit holding that admiralty law, including the doctrine of laches, applies through the Lands Act. See, e. g., *Pure Oil Co. v. Snipes*, 293 F. 2d 60; *Movable Offshore Co. v. Ousley*, 346 F. 2d 870; *Loffland Bros. Co. v. Roberts*, 386 F. 2d 540. When the respondent was injured, for the next two years until he instituted his lawsuit, and for the ensuing year of pretrial proceedings, these Court of Appeals' decisions represented the law governing his case. It cannot be assumed that he did or could foresee that this consistent interpretation of the Lands Act would be overturned. The most he could do was to rely on the law as it then was. "We should not indulge in the fiction that the law now announced has always been the law and, therefore, that those who did not avail themselves of it waived their rights." *Griffin v. Illinois*, 351 U. S. 12, 26 (Frankfurter, J., concurring in judgment).

To hold that the respondent's lawsuit is retroactively time barred would be anomalous indeed. A primary purpose underlying the absorption of state law as federal

law in the Lands Act was to aid injured employees by affording them 'comprehensive and familiar remedies. *Rodrigue v. Aetna Casualty & Surety Co.*, *supra*, at 361, 365. Yet retroactive application of the Louisiana statute of limitations to this case would deprive the respondent of any remedy whatsoever on the basis of superseding legal doctrine that was quite unforeseeable. To abruptly terminate this lawsuit that has proceeded through lengthy and, no doubt, costly discovery stages for a year would surely be inimical to the beneficent purpose of the Congress.

It would also produce the most "substantial inequitable results," *Cipriano v. City of Houma*, *supra*, at 706, to hold that the respondent "slept on his rights" at a time when he could not have known the time limitation that the law imposed upon him. In *Cipriano v. City of Houma*, *supra*, we invoked the doctrine of nonretroactive application to protect property interests of "cities, bondholders, and others connected with municipal utilities"; and, in *Allen v. State Board of Elections*, *supra*, we invoked the doctrine to protect elections held under possibly discriminatory voting laws. Certainly, the respondent's potential redress for his allegedly serious injury—an injury that may significantly undercut his future earning power—is entitled to similar protection. As in *England v. State Board of Medical Examiners*, *supra*, nonretroactive application here simply preserves his right to a day in court.¹⁰

¹⁰ We do not hold here that *Rodrigue*, in its entirety, must be applied nonretroactively. Rather, we hold only that state statutes of limitations, applicable under *Rodrigue's* interpretation of the Lands Act, should not be applied retroactively. Retroactive application of all state substantive remedies under *Rodrigue* would not work a comparable hardship or be so inconsistent with the purpose of the Lands Act.

Both a devotion to the underlying purpose of the Lands Act's absorption of state law and a weighing of the equities requires nonretroactive application of the state statute of limitations here. Accordingly, although holding that the opinion of the Court of Appeals reflects a misapprehension of *Rodrigue*, we affirm its judgment remanding this case to the trial court.

It is so ordered.

MR. JUSTICE DOUGLAS.

Rodrigue v. Aetna Casualty & Surety Co., 395 U. S. 352, does not, with all respect, require reversal in this case. Accordingly, I would affirm the judgment of the Court of Appeals without reaching the question of the retroactivity of *Rodrigue*.

Rodrigue, like the present case, arose under the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U. S. C. § 1331 *et seq.* That Act created a federal cause of action for offshore injuries enforceable in the federal courts, but made state laws applicable. 43 U. S. C. § 1333 (a)(2).

In *Rodrigue*, La. Civ. Code Ann., Art. 2315 (1970) was relevant, which provides in part: "The right to recover all other damages caused by an offense or quasi offense, if the injured person dies, shall survive for a period of one year from the death of the deceased"

In the present case Art. 3536 of the Code is applicable and it reads: "The following actions are also prescribed by one year:

"That for injurious words, whether verbal or written, and that for damages caused by animals, or resulting from offenses or quasi offenses."

The latter limitation is "prescriptive" only, i. e. that while the Louisiana remedy is barred, the right is not. Under Art. 3536, the limitation runs only to the *remedy*

and would not be applicable in another forum applying the substantive right. *Istre v. Diamond M. Drilling Co.*, 226 So. 2d 779, 794-799 (La. App. 1969). Respondent, therefore, argues that the federal doctrine of laches is the only limitation upon his right of recovery and that it is inapplicable where, as here, there is no prejudice to the defendant and any delay in filing the lawsuit was reasonably excusable. See, e. g., *Akers v. State Marine Lines*, 344 F. 2d 217.

The Louisiana courts consider the distinction between *peremptive* and *prescriptive* limitations important;¹ and by reason of the federal statute, making Louisiana law applicable, federal courts are bound by the distinction. *Richards v. United States*, 369 U. S. 1. As stated in *Rodrigue* the federal Act "supplemented gaps in the federal law with state law through the 'adoption of State law as the law of the United States.'" 395 U. S., at 357.

In *Rodrigue*—an action for wrongful death—the right is extinguished, if the action for recovery is not brought within a year of the death. *Kenney v. Trinidad Corp.*, 349 F. 2d 832; *Mejia v. United States*, 152 F. 2d 686. Under Art. 3536—which governs here—Louisiana law holds that it is merely a "procedural restraint which bars the remedy, but does not extinguish the right." *Fidelity & Casualty Co. v. C/B Mr. Kim*, 345 F. 2d 45, 50 (CA5 1965). See also *Page v. Cameron Iron Works*, 259 F. 2d 420, 422 (CA5 1958); *Jackson v. Continental*

¹ *Guillory v. Avoyelles R. Co.*, 104 La. 11, 15, 28 So. 899, 901 (1900):

"When a statute creates a right of action and stipulates the delay within which that right is to be executed, the delay thus fixed is not properly speaking one of *prescription*, but is one of *peremption*.

"Statutes of prescription simply bar the remedy. Statutes of peremption destroy the cause of action itself. That is to say, after the limit of time expires the cause of action no longer exists; it is lost."

Southern Lines, 172 F. Supp. 809 (WD Ark. 1959); *Succession of Pizzillo*, 223 La. 328, 65 So. 2d 783 (1953); *Devoe & Raynolds Co. v. Robinson*, 109 So. 2d 226 (La. App. 1959):

A district court, sitting in diversity jurisdiction in Arkansas, applied these principles of Louisiana law and held—properly in my mind—that Art. 3536 did not bar an action filed more than one year after the injury complained of. *Jackson v. Continental Southern Lines*, *supra*. See also *Page v. Cameron Iron Works*, *supra*. That decision is in perfect harmony with long-established rules of conflict of laws.² A different result

² G. Stumberg, *Principles of Conflict of Laws* 146-147 (3d ed. 1963):

"The traditional reaction in Conflict of Laws . . . has been that ordinarily limitation is procedural. This view was taken by the Dutch jurists, and where the question arises out of a general statute, it is the view generally accepted by Anglo-American courts. The result is that in the absence of a statute to the contrary in most jurisdictions, when the claim is based upon foreign facts, even though the foreign period of limitation has not run, the plaintiff may not recover if the time allowed for suit at the forum has expired. Conversely, if the foreign period has expired, suit may nevertheless be brought at the forum if the time specified there has not run." (Footnotes omitted.)

Accord, *Restatement of Conflict of Laws* §§ 603-604 (1934); *Restatement (Second) of Conflict of Laws* §§ 142, 143 (1971); 3 J. Beale, *Conflict of Laws* § 584.1 (1935); B. Currie, *Conflict of Laws* 232-234, 255 (1963); A. Ehrenzweig, *Conflict of Laws* 428-436 (1962); H. Goodrich, *Conflict of Laws* 267 (4th ed. 1964); Ailes, *Limitation of Actions and the Conflict of Laws*, 31 Mich. L. Rev. 474 (1933); Comment, *The Statute of Limitations and the Conflict of Laws*, 28 Yale L. J. 492 (1919).

While still sitting on the Court of Appeals for the Second Circuit, Mr. Justice Harlan said:

"In actions where the rights of the parties are grounded upon the law of jurisdictions other than the forum, it is a well-settled conflict-of-laws rule that the forum will apply the foreign substantive law;

should not obtain here where federal jurisdiction, 43 U. S. C. § 1333, flows from a head other than diversity.

Apart from traditional conflict of laws is the congressional mandate to apply state laws to these federal causes of action. If we are faithfully to apply the state law of Louisiana we would apply here not the Louisiana *peremption* rule applied in *Rodrigue* but the Louisiana *prescriptive* rule applicable to the instant personal injury case.

Today's decision conflicts with *Levinson v. Deupree*, 345 U. S. 648, where the District Court was enforcing in admiralty, a state cause of action for wrongful death. Although procedural irregularities in the appointment of the administrator would have barred—under the state statute of limitations—an action in state court, we held that federal courts were free to formulate their own procedural rules. If we were to follow *Levinson*, we would not bind federal courts to state rules of procedure designed to have no application beyond the state forum for which they were created.³ Cf. *Byrd v. Blue Ridge*

but will follow its own rules of procedure." *Bournias v. Atlantic Maritime Co.*, 220 F. 2d 152, 154 (CA2 1955).

Mr. Justice Harlan went on to hold that a Panamanian statute of limitations was not applicable where a Panamanian statutory right was being enforced under the admiralty jurisdiction of the Federal District Court.

³ The majority supports its limitation on actions by saying that "we are not dealing with mere 'housekeeping rules' embodied in state law. Cf. *Hanna v. Plumer*, 380 U. S. 460, 473." *Ante*, at 103 n. 6. This conclusion, however, is directly contrary to the characterization given the prescriptive limitation by Louisiana courts:

"... It is conceded by the five defendants-appellees that had plaintiff filed this suit in the federal court, the doctrine of laches would apply. The cases cited by plaintiff... were filed in the federal forum and are distinguished on this basis.

"But plaintiff chose the State forum. Plaintiff may have preferred some procedural advantages afforded in the State court, such

Electric Cooperative, 356 U. S. 525, 533-539; *Angel v. Bullington*, 330 U. S. 183, 192; *Atkins v. Schmutz Manufacturing Co.*, 435 F. 2d 527 (CA4 1970); Note, 71 Col. L. Rev. 865 (1971).

Today's decision also conflicts with our decision in *Richards v. United States*, *supra*. There, the Federal Tort Claims Act referred us to the local law for a rule of decision, just as *Rodrigue* and the Lands Act do in the present case. We concluded that the Act "require[d] application of the whole law of the State where the act or omission occurred," 369 U. S., at 11, including its conflict of laws decision.⁴ If we were to follow *Richards* and *Rodrigue* in the present case, we would apply Louisiana's

as: agreement of only nine of twelve jurors needed; ability to call under cross-examination any employee of a party as opposed to the federal rule wherein the right to call witnesses under cross-examination is limited to executive or top supervisory personnel; no procedural vehicle provided for directed verdict or judgment n. o. v. in State court; or shorter delay in State court between filing petition and trial. Having chosen the State forum, he is bound by State procedural rules. The argument that uniformity requires us to import the Federal procedural law of laches rather than use the Louisiana procedural law of prescription, is unacceptable. If we adopt the federal procedural rule in this instance, it would logically follow that more Louisiana procedural rules will, for the same reason, be abandoned in the future. We hold that our State courts are bound to apply State procedural rules." *Istre v. Diamond M. Drilling Co.*, *supra*, at 794.

The court then concluded, "The applicable Louisiana prescription statute, LSA-C.C. Art. 3536, is procedural." *Id.*, at 794-795.

⁴The majority would limit *Richards'* reasoning "that federal courts should not create interstitial federal common-law when the Congress has directed that a whole body of state law shall apply." *Ante*, at 105 n. 8. It is precisely because we must apply the "whole body" of state law, however, that we should apply the Louisiana interpretation of that law and not use the prescriptive rule to bar an action in a federal forum. H. Hart & H. Wechsler, *The Federal Courts and the Federal System*, 456-457 (1953).

prescriptive rule as it has been construed by Louisiana courts and not use it to bar an action in a different forum.

For in that other forum—here the federal district court—Louisiana law allows the federal court, consistently with conflict of laws, to apply a different limitation than Louisiana would apply in her own courts.

In *Rodrigue*, we said:

“The purpose of the Lands Act was to define a body of law applicable to the seabed, the subsoil, and the fixed structures such as those in question here on the outer Continental Shelf. That this law was to be federal law of the United States, applying state law only as federal law and then only when not inconsistent with applicable federal law, is made clear by the language of the Act.” 395 U. S., at 355–356.

We then concluded: “It is evident from this that federal law is ‘exclusive’ in its regulation of this area, and that state law is adopted only as surrogate federal law.” *Id.*, at 357.

Since the federal court is not a Louisiana forum,⁵ the Louisiana law of *prescription* permits enforcement of this claim after Louisiana’s one-year statute has run.⁶ Therefore, if we are to be faithful to the federal scheme we must apply Louisiana law; and Louisiana law would

⁵ The majority acknowledges that the federal court still retains its identity as a federal forum when it indicates that it is not to “function as it would in a diversity case,” *ante*, at 103 n. 5, and that only certain state rules are adopted, *ante*, at 103 n. 6.

⁶ *O’Sullivan v. Felix*, 233 U. S. 318, does not require a contrary result because there we considered only whether Art. 3536 could be applied to a federal action in a federal court and not how it should be applied. Petitioner conceded that his action was barred if Art. 3536 applied and “the sole question pressed by counsel and which we [were] called upon to decide [was] the application of the state statute to the conceded [federal] cause of action.” *Id.*, at 321.

not apply *Rodrigue* in a personal injury case where the suit is not brought in a Louisiana forum.

The Court of Appeals, speaking through our leading admiralty authority, Judge Brown, so held and went on to rule that in harmony with Louisiana's *prescriptive* rule this personal injury suit was not barred under the laches doctrine familiar to maritime law.

This is not a stale claim and its assertion after the one-year period ran was not prejudicial; no prejudice was indeed pleaded. Cf. *Holmberg v. Armbrecht*, 327 U. S. 392.

One who reads this record will be impressed with the grave injustice of applying the Louisiana one-year statute as if it were *peremptive*, rather than *prescriptive*. Death comes with a finality lacking in some personal injury cases; and the rigid rule applied in *Rodrigue* can do no injustice. But personal injuries are often lingering and one may not know for months whether he is partially or permanently crippled, whether he must be retrained for wholly different work, and so on. In this case it took some months after the injury for respondent (1) to realize that he could not return to his old work, and (2) to discover the kind of work he could do.

If we followed Louisiana law, as Congress directed, we would affirm the judgment of the Court of Appeals, reflecting as it does good law and a measure of justice not always allowable when the rigidity of *Rodrigue* governs a case.